S. Hrg. 103–771

HATCH ACT REFORM AMENDMENTS OF 1993

HEARINGS

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

S. 185

TO AMEND TITLE 5, UNITED STATES CODE, TO RESTORE TO FEDERAL CIVILIAN EMPLOYEES THEIR RIGHT TO PARTICIPATE VOLUNTARILY, AS PRIVATE CITIZENS, IN THE POLITICAL PROCESSES OF THE NATION, TO PROTECT SUCH EMPLOYEES FROM IMPROPER POLITICAL SOLICITATIONS, AND FOR OTHER PURPOSES

APRIL 27 AND 30, 1993

Printed for the use of the Committee on Governmental Affairs

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CONTENTS

S. 185—HATCH ACT REFORM AMENDMENTS OF 1993

TUESDAY, APRIL 27, 1993

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:39 a.m., in room SD–342, Dirksen Senate Office Building, Hon. John Glenn, Chairman of the Committee, presiding.

Present: Senators Glenn and Roth.

OPENING STATEMENT OF CHAIRMAN GLENN

Chairman GLENN. Good morning, and welcome to today's hearing on S. 185, the Hatch Act Reform Amendments of 1993, and I would stress reform amendments. This is not doing away with the whole Hatch Act, as has been alluded to by some of the reports.

Let me just say before I go on with my statement that I come as a convert to Hatch Act reform. I have said at some of our previous hearings on this that when I first came to the Senate I didn't think we needed any Hatch Act reform and was against it. Then I got into it and really looked at it as part of the Committee responsibilities, and the more I looked into it the more ridiculous the Hatch Act became in its present form and its present way of being carried out. So that is when we then began looking at ways to reform the Hatch Act, and now I am definitely committed to Hatch Act reform.

Ever since I assumed the chairmanship of the Governmental Affairs Committee, the Committee has held hearings on problems with the current Hatch Law and reported corrective legislation. I never understood why our very modest efforts, and they are modest efforts, always seem to produce Presidential veto threats and even a veto we couldn't override.

Year after year, Congress after Congress, consideration of the Hatch Act always evokes ridiculous extremes of opinions, but I think the future is brightening with regard to Hatch Act reform, and I underline reform again, not Hatch Act repeal. This session of Congress holds the strong promise that this legislation will not be vetoed, and we will work with the administration on enacting meaningful reforms into law.

At a time when so many people speak of reinventing Government, I am tempted to rename this legislation the Hatch Act Reinvention Amendments of 1993 because essentially what this bill would do is eliminate rulings that are confusing, non-sensical, and

trivial, and replace them with very clear-cut, workable and understandable rules. S. 185 would reform a 54-year-old law and bring it into this century, bring it up to the 1990's.

Under current law, if you are a Hatched Federal employee, for instance, you, like every other American—even though you are Hatched, you can write a $1,000 check to the partisan candidate of your choice for Federal office. However, let us suppose that your family budget doesn't permit this and you will want to make some kind of contribution. You may want to go down and you may want to stuff envelopes or volunteer to participate in a voter registration drive. This would make a lot of sense. You are giving in-kind contribution. But no. You would be breaking the law. The handcuffs of the Hatch Act permit you to give a $1,000 contribution, but don't permit you to lick an envelope on behalf of a candidate. I think that is ludicrous, as well as just being flat unfair.

Under current law, if you are a Hatched Federal employee, you can wear a partisan campaign button to work. You can put a political poster on your front lawn or on your car, but you can't wave that same poster at a rally. Where is the logic in that? Those are just a couple of examples.

Hearings that the Governmental Affairs Committee held in 1988 on the Hatch Act bore evidence that Federal and Postal Service employees are discouraged from engaging in even unprohibited activity because they are afraid of stepping over the blurry and crooked line that separates permissible activity from activity which is illegal.

S. 185 attempts to draw a bright line, a straight line, against all political activities on the job and for participation off the job with four basic rules to be followed. First, Federal employees would still be prohibited from running for partisan elective office. Second, they would still be prohibited, whether on or off the job, from soliciting campaign contributions from the general public.

Third, Federal workers would still be prohibited from coercion for political purposes. Fourth, Hatched employees would be prohibited from engaging in any political activity while wearing a uniform or insignia that identifies them as a Federal or postal employee.

Now, we also put tougher penalties in. As I recall, the amendment was one which we accepted on the floor, I think—I don't think it even had to have a vote, if I recall correctly. I believe it was Senator Dole who put it in. It put in the possibility of a $5,000 fine and, if I recall correctly, 3 years in jail for violations. So we put very tough penalties into this bill for any violations.

I will go back a little. In 1939, Federal jobs were being awarded on the basis of political contributions. There wasn't any doubt about that. It was a bad situation, and this is why the Hatch Act was passed. However, it is important to distinguish civil service hiring procedures and merit principles from the edicts of the Hatch Act. There is nothing in this Hatch Act reform bill that would change Federal civil service laws requiring that employees be hired and promoted based upon their qualifications. Unlike in 1939 when the Hatch Act was enacted, the classified merit system—the classified merit system—covers the majority of Federal jobs, removing the major source of political coercion, the awarding of jobs and promotions.

Under S. 185, Federal employees would be allowed to work voluntarily as private citizens for candidates and causes of their choice. They would be allowed to participate in rallies and conventions. They would be allowed to circulate a nominating petition. They would be allowed to work on a voter registration drive. These are just basic Constitutional rights that other Americans take for granted, and I believe it is high time for change.

We always hear that the Federal Government should be like other employers and not exempt itself from Federal laws. In this case, it should treat its own workforce a little bit more like ordinary citizens, for no private employer would seek to curtail such basic Constitutional rights. It is time we ended this game of trivial confusion and brought far greater fairness to the political process for civil servants.

PREPARED STATEMENT OF SENATOR GLENN

Good morning and welcome to today's hearing on S. 185, the "Hatch Act Reform Amendments of 1993."

Hatch Act reform is a subject very near and dear to my heart. Ever since I assumed Chairmanship of the Governmental Affairs Committee, this Committee has held hearings on problems with the current Hatch Act law and reported corrective legislation. I never understood why our modest efforts always seem to produce presidential veto threats and even a veto. But year after year, Congress after Congress, consideration of the Hatch Act always evokes ridiculous extremes of opinions.

But the future is brightening. This session of Congress holds the strong promise that this legislation will not be vetoed and we will work with the Administration on enacting meaningful reforms into law.

At a time when so many people speak of reinventing government, I am tempted to rename this legislation the Hatch Act Reinvention Amendments of 1993. Because essentially what this bill would do is eliminate rulings that are confusing, nonsensical and trivial, and replace them with clear-cut workable and understandable rules. S. 185 would reform a 54 year old law and bring it into this century.

Under current law, if you are a "Hatched" Federal employee, you—like every other American—may write a $1,000 check to the partisan candidate of your choice. However, let's say that your family budget doesn't permit this and you want to make some kind of contribution: you might want to stuff envelopes or volunteer to participate in a voter registration drive. This would make sense. But, no! You'd be breaking the law! The hand-cuffs of the Hatch Act permit you to give $1,000 but don't permit you to lick an envelope on behalf of a candidate. This, I submit, is ludicrous as well as being unfair.

Under current law, if you are a "Hatched" Federal employee, you can wear a partisan campaign button to work. You can put a political poster on your front lawn or on your car. But, you cannot wave a political poster at a rally. Where's the logic in this?

Hearings that the Governmental Affairs Committee held in 1988 on the Hatch Act bore evidence that Federal and postal service employees are discouraged from engaging in even unprohibited activity because they are afraid of stepping over the blurry and crooked line that separates permissible activity from activity which is illegal.

S. 185 attempts to draw a bright line: against all political activities on the job and for participation off the job with four basic rules to follow. First, Federal employees would still be prohibited from running for partisan elective office. Second, they would still be prohibited—whether on or off-the-job—from soliciting campaign contributions from the general public. Third, Federal workers would still be prohibited from coercion for political purposes. Fourth, Hatched employees would be prohibited from engaging in any political activity while wearing a uniform or insignia that identifies them as a Federal or postal employee.

In 1939, Federal jobs were being awarded on the basis of political contributions. This is why the Hatch Act was passed. However, it is important to distinguish civil service hiring procedures and merit principles from the edicts of the Hatch Act. There is nothing in this Hatch Act Reform bill that would change Federal civil service laws requiring that employees be hired and promoted based upon their qualifications. Unlike in 1939, when the Hatch Act was enacted, the classified merit system

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People are always saying that the Federal Government should be like other employers and not exempt itself from Federal laws. In this case, it should treat its own work force a little bit more like ordinary citizens—for no private employer would seek to curtail such basic Constitutional rights. It's time we ended this game of trivial confusion and brought far greater fairness to the political process for civil servants.

Please let me say that I look forward to working with the Clinton Administration on this legislation. I am pleased that Mr. James B. King, Director of the Office of Personnel Management, will be testifying on behalf of the Administration today.

Chairman GLENN. We do have a statement from Senator Akaka which will insert into the record at this point.

PREPARED STATEMENT OF SENATOR AKAKA

Mr. Chairman, I am pleased that the Committee is moving forward on a bill which holds tremendous importance for our nation's Federal employees. Reform of the Hatch Act is long overdue for the millions of Federal employees who have been denied the same basic rights afforded to those employed in the private sector.

As the budget debate has shown, Federal employees are often asked to shoulder the financial burdens of the Federal Government. The Administration has asked Federal employees to carry a large share of the responsibility in lowering the Federal deficit and spending by reducing Federal pay and benefits. Federal employees should not have to bear the additional burden of being denied the same constitutional rights to participate in the political process as well.

While the roots of democracy are struggling to take hold in the former Soviet Union, we have denied these same liberties to Federal employees in our own country. It saddens me to see that a law implemented to protect and assist Federal employees has, instead, been used to restrict and deprive them. I know firsthand how the Hatch Act has been used to prohibit Federal employees from participating, on their own time, in the political process. Throughout most of my tenure in Congress, my wife, Millie, was a Federal employee. Until her retirement several years ago, Millie was unable to represent me at political functions because she was a Federal worker.

Federal employees are Americans and deserve the same opportunities afforded to those who work outside the government. The Hatch Act amendments under consideration today will redress the inequalities facing Federal employees. They will provide the same political rights assured other Americans, while ensuring that individuals who work for the Federal Government do not take advantage of their positions. The bill seeks to allow Federal employees to participate in certain political processes which were previously banned, while protecting Federal employees from improper political solicitation. It also places more stringent restrictions on political coercion and provides greater penalties for violations.

During his recent confirmation hearing, Office of Personnel Management Director, James King, indicated his support for changes to the Hatch Act. He indicated at that time that stronger language may be needed in certain areas to uphold the integrity of the career service. I look forward to hearing Mr. King's thoughts on this matter.

Mr. Chairman, I wish to commend you for your leadership in this area, and look forward to working with you, members of the Committee and the Administration to ensure the political rights of our nation's Federal employees.

Thank you, Mr. Chairman.

Chairman GLENN. Let me say I look forward to working with the Clinton administration on this legislation. I am very pleased that Mr. James King, Director of the Office of Personnel Management, OPM, will be testifying on behalf of the administration today.

Mr. King, we welcome you to our hearing this morning. We look forward to your statement and then we will have some questions.

TESTIMONY OF JAMES B. KING, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

Mr. KING. Thank you, Mr. Chairman. I have a very brief statement, Mr. Chairman. First, I am pleased to appear before you today to present the views of the Office of Personnel Management on S. 185, the Hatch Act Reform Amendments of 1993.

Chairman GLENN. Jim, pull the mike right up in front—they are very directional mikes there—so people in the back can hear.

Mr. KING. Thank you.

Chairman GLENN. Thank you.

Mr. KING. Is that significantly better?

Chairman GLENN. That is better. Thank you.

Mr. KING. Thank you, Mr. Chairman. That is one of the enlightening things of being with your Committee, sir. You want to be sure that everyone is heard.

It is gratifying to have the Committee provide such early consideration of this significant legislation. As I am sure you are well aware, President Clinton has indicated that Hatch Act reform is long overdue, and that the right to participate in the political process should be restored to Federal and postal workers. With that in mind, Mr. Chairman, I would like to review the way in which S. 185 proposes to achieve that goal.

First, in an effort to end the longstanding and pervasive confusion with regard to political activity by Federal employees, S. 185 would amend the current law to draw a bright line between permissible and impermissible activities by making clear distinctions between activity on the job and activity that is off-duty and away from the workplace.

For example, for the first time in more than 50 years, employees would be allowed to work voluntarily on their own time for the candidates of their choice. They would be permitted to stuff envelopes, as you say, distribute campaign literature, and even participate in the management of political campaigns. On the other hand, all political activity on the job would be prohibited, including the wearing of campaign buttons, which is generally permitted today.

Beyond the on-duty/off-duty distinction, however, certain prohibitions in existing law would be retained. Under S. 185, Federal employees still would be barred from running for office in partisan elections and from soliciting political contributions from either the general public or subordinate employees. Perhaps most significantly, the coercion of one's subordinates would still be banned. The bill, in fact, would not only retain all existing prohibitions against the abuse of an employee's official position in an effort to influence others, but would also strengthen the criminal penalties for those convicted of such abuse.

Protection of employees is a critical element in maintaining a balance between the freedom to participate and the encroachment of political influence. If anything, further broadening of protections for employees might be considered. In particular, section 3303 of title 5, United States Code, the current provision barring recommendations by Senators and Representatives for individuals who are applying for competitive service jobs, could be strengthened in a number of ways.

For example, it could be extended to cover individuals applying for certain career-type excepted service jobs, so-called Schedule A and Schedule B positions in the excepted service that are not confidential or policy-determining, as a rule, but are excluded from the competitive service only because they cannot, for a variety of legitimate reasons, be subject to competitive examining procedures. That does not seem to justify excluding them from the protections available to other employees. The same rationale also could be used to extend protections to career members of the Senior Executive Service.

In addition, the scope of the protection against political interference could be widened to reach other personnel actions such as promotions, assignments, and transfers. A good example of a more extensive and detailed provision is Section 1002 of Title 39, United States Code, which bars political recommendations for postal employees. That section covers a broader range of personnel actions and prohibits recommendations not only from members of Congress, but also from certain other political sources. It also provides specific enforcement authority to address violations. It is a model well worth considering, Mr. Chairman.

I appreciate this opportunity to address the Committee on this important matter and I will be glad to answer any of the questions that you may have to the best of my ability. Mr. Chairman, I want to apologize for being tardy. I was victimized by my own arrogance to think that I was going to get an elevator faster than any other citizen.

[The prepared statement of Mr. King follows:]

PREPARED STATEMENT OF JAMES B. KING

I am pleased to appear before you today to present the views of the Office of Personnel Management on S. 185, the Hatch Act Reform Amendments of 1993. It is gratifying to have the committee provide such early consideration of this significant legislation. As I am sure you are well aware, President Clinton has indicated that Hatch Act reform is long overdue, and that the right to participate in the political process should be restored to Federal and Postal workers. With that in mind, I would like to review the way in which S. 185 proposes to achieve that goal.

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This protection of employees is a critical element in maintaining a balance between the freedom to participate and the encroachment of political influence. If anything, further broadening of protections for employees might be considered. In particular, section 3303 of Title 5, United States Code, the current provision barring recommendations by Senators and Representatives for individuals who are applying

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I appreciate having this opportunity to address the committee on this important matter and I will be glad to answer any questions you may have.

Chairman GLENN. OPM has a new regulatory policy at this point.

Mr. King, as you know, the House-passed version of Hatch Act reform is different from the Senate's, quite different. The House bill would allow Federal and postal employees to run for partisan elective office and would allow them to solicit campaign contributions from the general public. What is the administration's position on these two provisions?

Mr. KING. I know the administration supports the reforms of the Hatch Act, and I understand that they would approve any—I know the President suggested he would approve whatever came out of your conference, Mr. Chairman. So whatever the Congress decides they would like, I believe this President will support.

Chairman GLENN. Well, you are not taking a position, then, between the House bill—they are quite different—the administration is not taking a position, then, between the Senate and the House bills as to which they would prefer or what provisions they would like out of each one?

Mr. KING. Not with me, sir. I made the inquiry and the response I received is what I have shared with you, Mr. Chairman.

Chairman GLENN. Under the current Hatch Act, Federal employees are allowed to make monetary contributions to political candidates. However, they are prohibited from making in-kind political contributions, such as just stuffing envelopes or answering phones anonymously, or whatever. Critics of Hatch Act reform comment that by lifting these prohibitions of in-kind contributions, Federal employees would somehow be subject to more political coercion.

Do you believe that allowing Federal employees to make in-kind political contributions on their own time now, strictly on their own time, will expose them to danger?

Mr. KING. If there were a danger, I would have been a victim of that industrial accident many years ago, Mr. Chairman. No, I do not.

Chairman GLENN. Do you believe that allowing some limited, non-visible activity such as stuffing envelopes in the back room of a store front campaign office, just as an example, will somehow open the flood gates to political coercion and abuse of public office?

Mr. KING. Not as a thrust of the legislation, as I understand it, particularly with the willingness the Committee has expressed

right from the beginning that if they saw anything happening, they would move on it immediately. Therefore, I don't have a concern in that area, Mr. Chairman.

Chairman GLENN. Some opponents of the bill also have said that whatever political activity at whatever level is allowed for Federal employees, it will become more what is required of them because employees want to please their boss. In other words, it won't be that voluntary. Do you see any problem with that?

Mr. KING. Well, I don't know, Mr. Chairman. I mean, we have—I am trying to recollect—we have the Combined Federal Campaign, we have food drives, we have blood drives. I am thinking of the most charitable and compassionate sorts of approaches and if we get an over-enthusiastic manager promoting them, we hear from the employees. I seriously doubt if they are going to be put upon in this context. If employees are willing to complain about coercion in these other instances, we are certainly going to hear about it on this. What I am saying, Mr. Chairman, to be more direct, so far public employees have not indicated that they are a silent group by any stretch of anyone's imagination.

Chairman GLENN. Maybe we are insulated a little bit on the Hill here. I don't know, but I hear very few complaints today that there is political coercion going on. In fact, I think probably today in the Federal workforce it may be almost non-existent. Do you believe this is due to Hatch Act provisions or are there other factors which weigh in as well?

Mr. KING. I think the Hatch Act certainly has a dampening effect on participation. I also believe that there has been a tradition because it is unknown. So the assumption is—I know when I first came into Federal service, the statement was that if you are a Federal employee, you can't participate in anything in politics at all, if you will, in the election process, and I think the ordinary worker never bothered to go and read the particular sections. They merely took that as the rule and I think an awful lot of them have functioned that way.

Chairman GLENN. Some critics of Hatch Act reform contend that the law must remain in its current form as the protections afforded by the Act are critical to the public perception and confidence in the impartial, even-handed conduct of Government business. If this reform is to take place, these opponents of reform say that we should at least exempt certain groups in sensitive positions, as they are called, such as law enforcement officers.

Law enforcement officers at the State and local level enjoy political freedoms. Their salaries are paid for by taxpayer dollars. They are supposed to act impartially to enforce the laws of their particular jurisdictions. In 1990, I remember Mr. Bush in Boston, surrounded by almost a sea of blue-uniformed police officers, accepting their endorsement for President of the United States. One would think that that image could affect the public's confidence and perception that the police are enforcing the law on an even-handed basis.

Yet, no supporters of Michael Dukakis complained that the police were deliberately targeting them for harassment. Furthermore, no opponents of Hatch Act reform called for a Hatch of the police. I would point out that under S. 185 Federal and postal employees

could not rally around political candidates wearing a uniform, so we tighten up some in that respect.

What is the administration's position, Mr. King, on exempting certain groups, not just local police which I have been talking about, but some of our own law enforcement officers at the Federal level?

Mr. KING. The official administration position is that no agencies or group of employees should be excluded from the provisions of the Hatch Act reform legislation. The employees of the Federal Elections Commission have been excluded by H.R. 20, as passed by the House of Representatives. The administration opposes excluding any additional employees or agencies.

Chairman GLENN. Thank you. Critics say that without the Hatch Act excuse, Federal employees would confront very subtle pressures to contribute time to partisan causes. Inevitably, these critics predict that the civil service will be politicized. However, Hatch Act restrictions were lifted on State and local employees almost 20 years ago and such politicization has not occurred. In light of this history, do you believe that reform of the Hatch Act will lead to politicization of the civil service?

Mr. KING. I don't believe so.

Chairman GLENN. It has been suggested by some Senators that each agency and department should conduct a referendum of all employees to determine if Hatch Act reform should apply to them. Does the administration support placing Constitutional rights of Federal employees up to a simple majority vote?

Mr. KING. To the best of my knowledge, no, and neither do I, Mr. Chairman.

Chairman GLENN. Thank you very much. That is all the questions I have.

Senator Roth.

Senator ROTH. Thank you, Mr. Chairman. It is indeed a pleasure to welcome you, Mr. King.

Mr. KING. Thank you, Senator.

Senator ROTH. Let me, if I may, read my opening statement, Mr. Chairman. I regret that I am late, but I had another meeting to go to.

OPENING STATEMENT OF SENATOR ROTH

As President Clinton and the Nation celebrates the 250th anniversary of the birth of Thomas Jefferson, the first Democratic President, it is an appropriate time to consider his views on the relationship between Government and Government employees. Jefferson, one of the very first people to comment on the issue of employee political activity, observed that it violated the spirit of the Constitution for Federal officials to engage in electioneering.

Despite Jefferson's directive and the passage of the Civil Service Act of 1883, problems with political activity continued to arise. In 1886, President Cleveland issued an executive order which warned Federal employees against the use of their official positions in an attempt to control political movements. In 1907, President Theodore Roosevelt amended the executive order to prohibit employees from taking an active part in political management or in political campaigns.

In spite of all the efforts of our various Presidents through the years, our Nation never licked the problem of the spoils system until a Democratic Congress, under the leadership of a Democratic President, enacted the Hatch Act in 1939. Since then, the Hatch Act has protected the Federal employee, fostered a more effective workforce, and enhanced the confidence of the citizenry in the nonpartisan administration of Government.

S. 185 not only repeals the heart of the Hatch Act, but it eliminates the ability of future Presidents, at least as I read the bill, to protect employees from subtle coercive pressures and to provide the American people even-handed administration of Government programs. Thus, S. 185 is far worse than simple repeal in that it would make illegal the actions of a Thomas Jefferson or a Theodore Roosevelt in protecting Federal employees and in serving the American public.

S. 185 does not merely reverse the last 54 years, but truly all 204 years of our experience. Once employees are allowed to engage in partisan political activity, including direct involvement in campaign, no anti-coercion statute will be able to protect them from subtle pressures. What will be allowed will become expected, and as it is human nature to want to get ahead, employees will feel obligated to participate in partisan campaigns in order to gain a promotion or a bonus.

As the Congress and the administration consider providing Federal employees with greater flexibility to hire, classify, promote, and evaluate—an authority that I believe is necessary in order to make the Federal Government more effective and efficient—we must be even more alert to the dangers of this legislation, for repealing the Hatch Act's basic protections will create an environment where employees will come to expect that political considerations, not merit, weighs heavily in the decisions which impact their everyday lives.

The Hatch Act is working to prevent such an environment, but the temptation to abuse is at the gate. The temptation of using civil servants to perform political acts is ever-present. One need look no further than Washington, D.C., and the recent allegations being investigated by the Office of Special Counsel to understand this.

In addition, special counsel prosecutions in New York and Tennessee demonstrate that prohibitions alone, such as those in S. 185, will not prevent coercion. If every bit of coercion or pressure were detectable, this would be less a problem, but here the party being coerced is unlikely to complain about it because it will lead to their own possible advancement, and there are those who will engage in partisan activity against their will in order to obtain favor even when such conduct is not coerced or even solicited. This latter situation illustrates the failure of the theory that in this context one can permit activity and prohibit abuse.

Proponents of S. 185 believe they have answered the question of how to draw a bright line between permissible and prohibited conduct. They would permit partisan activity off-duty and prohibit such conduct on-duty. The problem is that this so-called bright line has little to do with concerns of subtle pressures. The fact that an

employee engages in political conduct off duty does not answer the question whether the employee has been pressured on duty.

In addition, the bright line does nothing to counter the public's perception of a partisan Government workforce. Federal employees involved in political activity will become identified with partisan causes while off duty. Even the Washington Post, the guardian of free speech, prohibits its reporters and editors from becoming actively involved in political caucuses off duty because it depends on the appearance of non-partisan reporting the news for its credibility. Surely, its reporters have political beliefs, but those beliefs are suppressed in order to prevent the public from perceiving that it leans one way or the other. This is even more important for the Federal Government, whose employees make thousands of decisions a day which impact upon millions of people.

In my opinion, President Clinton is the very first President in this century who favors signing S. 185, so there is a good chance that this legislation will become law. Therefore, we should carefully examine the details of this bill to see if the legislation can be improved. We are in a very different context and I think we need to think about this very seriously.

The arguments have heretofore been made in the broadest polemical terms—First Amendment rights versus protecting against the spoils system. Thus, for example, we have never really considered fully whether all types of employees should be treated the same under this legislation. As the Committee and the Senate considers S. 185, such questions deserve our careful consideration.

PREPARED STATEMENT OF SENATOR ROTH

As President Clinton and the Nation celebrates the 250th anniversary of the birth of Thomas Jefferson, the first Democratic President, it is an appropriate time to consider his views on the relationship between government and government employees.

Jefferson, one of the very first people to comment on the issue of employee political activity, observed that it violated the "spirit of the Constitution" for Federal employees to engage in "electioneering".

Despite Jefferson's directive, and the passage of the Civil Service Act of 1883, problems with political activity continued to arise. In 1886, President Cleveland issued an executive order which warned Federal employees against the "use of their official positions in attempts to control political movements." In 1907, President Theodore Roosevelt amended the executive order to prohibit employees from taking an "active part in political management or in political campaigns."

In spite of all the efforts of various Presidents through the years, our nation never licked the problem of the spoils system until a Democratic Congress under the leadership of a Democratic President enacted the Hatch Act in 1939. Since then, the Hatch Act has protected the Federal employee, fostered a more effective workforce, and enhanced the confidence of the citizenry in the non-partisan administration of government.

S. 185 not only repeals the heart of the Hatch Act, but it eliminates the ability of future Presidents—as I read the bill—to protect employees from subtle coercive pressures and to provide the American people evenhanded administration of government programs. Thus S. 185 is far worse than simple repeal in that it would make illegal the actions of a Thomas Jefferson or a Theodore Roosevelt in protecting Federal employees and in serving the American public. S. 185 does not merely reverse the last 54 years but truly all 204 years of our experience.

Once employees are allowed to engage in partisan political activity including direct involvement in campaigns, no anti-coercion statute will be able to protect them from subtle pressures. What will be allowed will become expected.

As it is human nature to want to get ahead, employees will feel obligated to participate in partisan campaigns in order to gain a promotion or a bonus. As the Congress and the Administration consider providing Federal managers with greater flexibility to hire, classify, promote, and evaluate, an authority that I believe is necessary in order to make the Federal Government more effective and efficient, we

must be even more alert to the dangers of this legislation. For repealing the Hatch Act's basic protections will create an environment where employees will come to expect that political consideration, not merit, weigh heavily in the decisions which impact their every day lives.

The Hatch Act is working to prevent such an environment, but the temptation to abuse is at the gate. The temptation of using civil servants to perform political acts is ever present. One need look no further than Washington, D.C., and the recent allegations being investigated the Office of Special Counsel, to understand this. In addition, Special Counsel prosecutions in New York and Tennessee demonstrate that prohibitions alone—such as those in S. 185—will not prevent coercion.

If every bit of coercion or pressure were detectable, this would be less of a problem. But here, the party being coerced is unlikely to complain about it because it will lead to their own possible advancement. And there are those who will engage in partisan activity against their will in order to obtain favor even when such conduct is not coerced or even solicited. This latter situation illustrates the failure of the theory that in this context one can permit activity and prohibit abuse.

Proponents of S. 185 believe they have answered the question of how to draw a bright line between permissible and prohibited conduct. They would permit partisan activity "off-duty" and prohibit such conduct "on duty." The problem is that this so-called bright line has little to do with concerns of subtle pressures. The fact that an employee engages in political conduct off-duty does not answer the question whether the employee has been pressured on-duty.

In addition, the bright-line does nothing to counter the public's perception of a partisan government workforce. Federal employees involved in political activity will become identified with partisan causes while off duty. Even the *Washington Post*, the guardian of free speech, prohibits its reporters and editors from becoming actively involved in political causes off duty because it depends on the appearance of non-partisan reporting of the news for its credibility.

Surely its reporters have political beliefs, but these beliefs are suppressed in order to prevent the public from perceiving that it leans one way or the other. This is even more important for the Federal Government, whose employees make thousands of decisions a day which impact millions of people.

In my opinion, President Clinton is the very first President who favors signing S. 185. So there is now a good chance that this bill will become law. Therefore, we should carefully examine the details of this bill to see if the legislation can be improved. We are in a very different context. We need to think about this very seriously.

The arguments have heretofore been made in the broadest, polemical terms—First Amendment rights versus protecting against the spoils system. Thus, for example, we have never really considered fully whether all types of employees should be treated the same under the legislation. As the Committee and Senate consider S. 185, such questions deserve our careful consideration.

Thank you, Mr. Chairman.

Senator ROTH. That is the end of my prepared statement, Mr. Chairman, but I do have a series of questions.

Chairman GLENN. Go ahead. I have completed my questions, so go ahead. That is fine.

Senator ROTH. Thank you, Mr. Chairman. Mr. King, during your confirmation hearing you stated that you would like to see some stronger language in the bill on the prohibitions of reaching into the career service for promotions and other things going through elected officials. Your testimony today recommends statutory language currently part of Title 39 governing the Postal Service.

Even if members of Congress are prohibited from making such contacts, isn't there a bigger cause for concern that such pressures will emanate from the White House and Executive Branch political appointees? Obviously, we are not only talking about this White House, but future White Houses as well.

Mr. KING. Well, Mr. Chairman, I think the so-called Malek period under President Nixon was when we had an existing Hatch Act, and probably the greatest documented abuses took place within the civil service. I don't think we have seen anything like that

since. Part of it is that there is a governance, as you well know, among us in which we try to carry out the laws as put before us. I don't see where this change would enhance a Malek operation operating out of the White House to skew the civil service system in a partisan fashion. I don't think that this would enhance it, and surely the existing law didn't stop it.

Senator ROTH. You don't see it possible——

Mr. KING. I don't——

Senator ROTH. As I say, we are not talking about legislation that just applies to this particular White House. We are talking about the long term.

Mr. KING. But that is why I picked Mr. Malek because there has been enough time gone by, almost 20 years, and what we saw was something that happened in that period with the existing legislation, and because, I think, a number of people were sensitized to what happened, I think we collectively have worked to avoid that happening again. So it wasn't the legislation itself that framed it. There was a public attitude and a support by people such as yourself.

Senator ROTH. Let me ask this. You, in your statement, called for the inclusion in the bill for additional protections. Could you provide to the Committee the language that you think would achieve that, and could you make sure that the language also deals with undue influence by the Executive as well as the Congress?

Mr. KING. I would put forth the language that I recommended, Senator, which was the present postal legislation that exists. If it is felt you need to go further, I yield.

Senator ROTH. The problem with that is it only applies to Congress.

Mr. KING. Right, sir, the Congress and other elected officials and party officials.

Senator ROTH. So what I am suggesting is we ought to have the same kind of safeguards that apply.

Mr. KING. We could draw some other line, I am certain.

Senator ROTH. It is my understanding that you stated before I arrived that the President would sign either the House or Senate bill?

Mr. KING. That is what I have been told, sir.

Senator ROTH. Now, under S. 185 United States military personnel will remain Hatched. Does the administration support this exclusion, and why draw the line with military personnel?

Mr. KING. I am only responsible for the civilian workforce, sir, so I haven't been drawn into that, Senator.

Senator ROTH. But you are here to represent the administration on this legislation and this legislation does except the military personnel from its inclusion. Why is that? Why shouldn't military personnel be covered under this reform when we are, I think, excepting employees of the Defense Intelligence Agency, the CIA? Why should there be that exception?

Mr. KING. I would get back to you on that, Senator. I focused on my responsibilities, which are that of the civilian workforce, sir, but I will try and get back to you on it.

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Currently, military personnel are covered by Department of Defense Directive 1344.10, which is entitled *Political Activities by Members of the Armed Forces.* We would defer to the Department of Defense with regard to the advisability of any changes in that directive.

Chairman GLENN. Will the Senator yield?

Senator ROTH. Yes.

Chairman GLENN. Just as a comment, military personnel are not Hatched now. The Hatch Act only applies to civilian personnel, I believe.

Senator ROTH. Yes, but my understanding is that there is a similar code, and so if——

Chairman GLENN. We are not dealing with that code, though, here. This is not——

Senator ROTH. Well, I am asking the question why aren't we. If one feels strongly that civilian employees are being denied their Constitutional rights, the political right to be active, why aren't there the same concerns? This Committee certainly has jurisdiction over military matters in this regard as well as civilians, so it is not a lack of jurisdiction on the part of the Committee. What I am suggesting is that it seems to me clear that if you are going to go this direction, powerful arguments can be made that it ought to apply to military as well.

Let me ask you this, Mr. King. Does it give you any concern that domestic law enforcement agencies—the FBI, the Justice Department, the Internal Revenue Service—will be un-Hatched as well? Does that give you any concern, or would you be willing to consider some special legislation that would continue to Hatch or at least cover those employees in sensitive positions?

Mr. KING. Senator, at this time I think this is really left to the Committee. The question was directly to me and the civilian workforce. I don't see any difficulty at this time. There may be compelling reasons on an individual case basis, and I am sure they will come forth.

Senator ROTH. You don't see any difference between the FBI and, say, GSA employees?

Mr. KING. I think part of the thrust of the question, Senator—and, please, I don't want to misread it, but bear with me. The thrust of the question is does this law compel people to go out and conduct themselves——

Senator ROTH. That is not the question I am asking here.

Mr. KING. Well, that is really the direction this goes.

Senator ROTH. No, and the question I am asking is do you see any special considerations arising in respect, say, to the FBI or Justice Department,

Mr. KING. Not necessarily, sir.

Senator ROTH. Not necessarily at all? It doesn't give you any concern that they, in their off-duty hours, might campaign very actively in a partisan way? You don't think that that will have any impact as far as the public is concerned as to whether or not the laws are being enforced in a non-partisan way?

Mr. KING. I don't see a giant wave of law enforcement types out stuffing envelopes, no.

Senator ROTH. But you admit that it is possible that someone of them would do it?

Mr. KING. I have learned from my investigatory days that anything is possible. I am just not certain——

Senator ROTH. What about the Internal Revenue Service? Does it give you any pause for concern that an individual working for IRS is going out collecting funds, for example? If that agent was reviewing your tax payments, would it bother you or put any special pressure on you if he asked or she asked for a political contribution?

Mr. KING. Well, you mean if someone, anyone, asked me for a kickback, $50, or, how about buying me dinner? I don't see any difference. I am suggesting, Senator, that the people in our agencies who will raise the devil if you put pressure on them to give blood, to give to our Combined Federal Campaign operations for charity—I can't imagine them remaining mute during the kinds of things you are describing. That is beyond my imagination. Now, possibly, they will. I don't know. I couldn't possibly predict every situation that might occur.

Senator ROTH. Well, why do you think some of our past Presidents, including Jefferson—and, of course, this legislation was enacted during Franklin D. Roosevelt's administration. Has people's conduct changed so in the meantime that the problems that we are seeing being developed in the past couldn't develop in the future?

Mr. KING. Well, first, I think the politics of my youth and the way it was practiced and the politics of today are totally different. Our budgets in those happy days were probably 75, 80 percent what they called field organization. Today, it is 90 percent electronic media. It is straight to the media. Computers have replaced people. That really was the evaporation. I think Mr. Broder and others have written some very distinguished texts on what has happened to the American political system and the American political party.

What I see here is not a partisan effort. What I see is a request that the ordinary citizen working for our Government can participate in a democratic system in a different level. I think the politics of the time and the context have changed dramatically, Senator.

Senator ROTH. Well, of course, some very distinguished public interest groups such as Common Cause would strongly disagree, and a number of newspapers such as the New York Times have indicated that it would be a serious change to un-Hatch the Federal employee.

The point I am trying to make here is that if we are going to proceed that direction, it seems to me obvious certain agencies and certain positions which are particularly sensitive—that at least we ought to try to shape any such legislation in such a manner that it will limit the problems that can, I think, frankly, be foreseen.

Now, according to a survey several years ago by the Senior Executive Association, 74 percent opposed change in the Hatch Act. The Federal Executive Institute Alumni Association surveyed their members on a series of issues, including Hatch Act reform. Out of more than 1,300 responses to their question, over 60 percent opposed changes to the Hatch Act. Why, Mr. King, do you think a majority of these employees opposed change in the Act?

Mr. KING. I must be candid with you. Anytime anyone suggests change, it scares me, so I would assume they are no different. Change is a threat.

Senator ROTH. Well, these are your top professional people. They are not naive or untrained. They are, frankly, as sophisticated a group as you will find, in my judgment, either in the private or public sector. So I don't think you can put it down on a basis that they just fear charge or are ignorant of what the change would mean. I think it shows that among our professionals there is some very, very genuine concern about this proposed change.

Mr. King, S. 185 would allow Federal employees to solicit political contributions from fellow members of their employee organizations who have a PAC. H.R. 20 provides even broader authority for Federal employees to solicit money contributions. The prohibition against solicitation in current law was not established in the Hatch Act, but rather in an 1876 law which prohibited certain employees from requesting, giving to, or receiving from any other employee money for political purposes. Is the administration prepared to overturn 100 years of precedent in this area?

Mr. KING. Yes.

Senator ROTH. Let me ask you this question. There is a lot of talk at this time about doing away with PAC funds. Isn't it somewhat inconsistent to propose to just do the reverse with the Government? Isn't this another illustration where Government treats itself specially rather than by the common rules of the public?

Mr. KING. Well, I think you are talking about public financing as a remedy, but that is a separate issue.

Senator ROTH. We are not talking public financing, Mr. King. We are talking about contributions from the individual PACs.

Mr. KING. But with public financing, you don't need PACs, you don't need anyone out there collecting money at all, and that would solve that problem.

Senator ROTH. Well, I don't think any recent proposal has proposed full public funding. Much of the criticism of current campaign financing has been these PAC funds. The question I am asking is isn't it inconsistent, isn't it another good illustration of Government handling themselves specially when they are moving in another direction in respect to those employed in the private sector?

Mr. KING. No. They are mainstreaming as far as I can see. We are taking employees and we are giving them the same privileges that are enjoyed, whether you work for Ford or IBM, whether you work for the executive PAC at IBM or the executive PAC of any of the corporations in America.

Senator ROTH. Let me ask you this question more specifically. Is it inconsistent to say in the private sector, as is being proposed, that PAC funding is illegal and at the very same time for us to make it legal in the Government sector? I am not talking about public financing. I am just talking about PAC funding, whether it is Government or the private sector. Shouldn't we treat the Government employees insofar as PAC funds are concerned the same as we do the private sector?

Mr. KING. I don't see any difficulty with that.

Senator ROTH. Would you recommend that?

Mr. KING. But I don't understand the implications that you are raising. I am not an expert on election law or election financing. I have a knowledge of it from a practicum, but not from the legal——

Senator ROTH. What I am suggesting is that if we make it illegal in the private sector to have PAC funds, shouldn't the same illegality apply to Federal employees?

Mr. KING. What I am hearing is whatever applies to the private sector should apply to the public in that sense?

Senator ROTH. As far as PAC contributions are concerned.

Mr. KING. Well, I think you have got to put it in context. I am not upset by that, sir, if there is election campaign reform on financing.

Senator ROTH. Would you recommend it?

Mr. KING. Would I recommend public finance? Yes, sir.

Senator ROTH. No, no, I am not talking public financing. I am talking about PAC funds.

Mr. KING. But I am saying PAC funds are there because there is no public financing. Otherwise, only the wealthy can play.

Senator ROTH. One does not necessarily depend on the other. Again, I want to keep this question very simple. You have unions in Government and you have unions in the private sector. Now, if we tell the unions in the private sector that they can't solicit PAC funds to contribute, shouldn't we do the same thing in respect to Federal employees and Federal unions?

Mr. KING. Whatever the law of the land is, I would certainly support.

Senator ROTH. Would you recommend that it be consistent?

Mr. KING. That PACs be barred from participating in politics? I have no trouble, Senator.

Senator ROTH. Would you recommend that if PAC funds are illegal in the private sector, they would also be illegal——

Mr. KING. If PACs were illegal in the entire private sector, I don't see any reason why there wouldn't be continuity.

Senator ROTH. The President and the Vice President and many members of this Committee have expressed great interest in reinventing Government. I think you share this belief——

Mr. KING. I do.

Senator ROTH [continuing]. And that we must reform how Federal employees are hired, are classified, promoted, and evaluated. As we provide the supervisory flexibility that I think you and I both think is necessary to make the Government more efficient, we must be even more alert to the dangers of this bill. Repealing the Hatch Act's basic protections while increasing supervisory discretion over employment could create an environment where employees will come to expect that political consideration, not merit, weighs in the decisions which impact their everyday lives. Does this concern you at all?

If we are going to give broad discretionary power to supervisory employees to hire, to promote, to discipline, to discharge, and we are going to open the system to political machinations, are you at all concerned that politics rather than merit might become a factor in many cases?

Mr. KING. Mr. Chairman, I have worked in both systems. I generally find that who you are working for and the decisions that are made are often made not for partisan reasons. That has generally been my experience. It is not partisan reasons. You go into an agency and work with the people who are effective, wherever they came from. If they are career employees, you move forward with that. If they are non-career employees, the statement that I have had so that I don't sound unusual is the broom that swept you in is here to sweep you out. Other than that, the operation continues as is, and that is what has given us a very strong civil service.

There have been attempts to reach in in the past, as you know, Senator, and they were to some degree successful. Part of it is because we are dealing with a group of innocents. If you put a wolf in among the lambs, unless they have read their Bible, it is unlikely they are going to lie down with them. They will slaughter them, and in this case they did, so that the system can be vulnerable if it is left and it is treated in an indifferent fashion.

But we have in our States, in our counties, and in our local governments a very, very different style of management and the political participation in the vast majority of those systems works, whatever party happens to be in charge. It is really a question of the dedication of the individuals involved and their mandate and the oversight that is provided.

Senator ROTH. Well, I just have to say, Mr. King, it bothers me deeply. Again, I am not talking about this four years or the next, but as one who strongly believes we have to reform Government to make it more efficient and open the doors to broader discretion on the part of supervision, I think at the same time opening the door to political machinations raises a very serious question and I fear, frankly, could jeopardize the reform that I think is so essential to the future.

One final question, Mr. Chairman. On January 27, 1993, the Department of Agriculture issued a press release entitled "Espy to Cut Washington Bureaucracy Before Closing USDA Field Offices." Less than a week later, the Department of Agriculture participated in a Democratic National Committee job fair. "Democratic Jobs Galore," stated the *Washington Post* headline.

Could you explain how less than a week after promising to cut Washington bureaucracy the department was seeking new employees at a job fair for campaign and Presidential transition workers? Should we expect this kind of performance to become the more general practice if this bill becomes law?

Mr. KING. Were these for non-career or for career, sir?

Senator ROTH. For either.

Mr. KING. For non-career, I think the doors are open for very wide discretion as to who is selected. For career, I think there are very clear policies for recruiting and the placement of career, and I support the present regulations for career in general terms, and for the non-careers, as I suggested. I think you will find that the Department of Agriculture has more non-career positions than almost any other agency in Government. So I am not familiar with the story.

Senator ROTH. This was just for career.

Mr. KING. This was for career?

Senator ROTH. That is correct.

Mr. KING. I would like to see it and I will get back to you on your question. I am not familiar with it and I don't think it is fair to the question not to be able to respond to it fully.

Senator ROTH. Well, I would appreciate it.

Mr. KING. Thank you, Senator.

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The job fair was specifically intended as an opportunity for campaign workers to meet some of the transition staff at the various departments and agencies to pursue leads on political appointments in the new Administration. The Department of Agriculture representatives attended only in connection with filling political appointments in that department. As at many other job fairs, the Office of Personnel Management's Washington Area Service Center (WASC) staff was asked to present information to job fair participants on the Governmentwide competition Civil Service hiring system, if any of them were interested in competing for regular Government jobs.

Senator ROTH. Again, my concern, Mr. King, is that the public already is disenchanted with Government, disenchanted with the effectiveness of the Federal Government. What worries me at this stage when we hopefully are going to begin some major reforms that will reinvent and make Government more efficient is that if we open the door—not only open the door to political machinations, but make it impossible for this President or any future President to take steps to correct, we may be taking a step backward in gaining the confidence of the American public.

Thank you, Mr. Chairman, and thank you, Mr. King.

Mr. KING. Thank you, Senator.

Chairman GLENN. Thank you, Senator Roth. Just a couple of comments. As far as what people were asked about, as to whether they preferred changes in the Hatch Act, obviously people are not going to say just do away with the Hatch Act completely, and we are not proposing that. There is no proposal here that says we do away with the Hatch Act. What we do is try and make it fair.

I repeat what I started off with that these are reforms of the Hatch Act, reforms only, and what we do is we make very tight laws of what a person can do on the job, tighter than they are now. We are strengthening the Hatch Act, and make tough penalties for violations. A possibility of 3 years in jail and a $5,000 fine, I believe, is what we passed before when we passed this through the Senate, and I think Senator Roth supported that. If I recall, it was Senator Dole's proposal. I may be mistaken on that, but I think it was.

So we have very tight restrictions of what you can do on the job, tighter now. You can wear a campaign button to work right now. You can't do that under this reform. Yet, off the job we say if you want to lick envelopes, if you want to participate in a campaign, very limited participation, well, that is OK, like every other American does. When I think of all these horrible things that might happen, I just don't believe that they are realistic at all.

Let me address the military. That was brought up here a moment ago. We looked at the military in 1990 and we talked to Senator Nunn. He felt that if changes were going to be made in that area that they be addressed by the Armed Services Committee as well as possibly by this Committee. Military personnel are not

Hatched now. DOD does have its own regs, but let me tell you the reason for that.

The reason is that military personnel are not personnel that go home at the end of the day and are off duty, basically. Military personnel are viewed under the law and by military regulations as being on duty 24 hours a day. They are on call. They may go back to the barracks at 4:00, but they are just as subject to be called out at 6:00, 8:00, midnight, 2:00 in the morning, and so they are not looked at as having the normal civil service off-duty times that other people have. So that is one of the reasons why they come under a completely different set of regulations.

Now, as far as IRS agents, Department of Justice officials, they cannot go out and raise funds from private citizens. I believe my distinguished colleague was suggesting—at least I took his questions to suggest that they could. No one can. Civil service people under this thing would not be permitted to go out and solicit privately for money, and so that wouldn't apply, whether you are Department of Justice, whether you are IRS, or whether you are any other civil servant in the Government of the United States.

We went through some of these things before when we had the Hatch Act up before and our previous testimony on that seems to continue to be ignored, but those are the facts, no matter what else may be said about it. So, anyway, what we do is we basically tighten up on Hatch Act on the job and we loosen up a little bit off the job, but with very careful controls on that. It is reform.

It was stated earlier that this repeals the heart of the Hatch Act. I just don't see how any interpretation of S. 185 can say that we are repealing the heart of the Hatch Act when we tighten up on what can be done on the job and loosen up a few restrictions off the job. That is basically what this does. It is not all the great, horrendous things that it is made out to be.

Another one I wanted to mention, too, is S. 185 would let Federal and postal PACs operate like every other PAC, and if campaign finance reform eliminates PACs, then Federal and postal PACs would be eliminated, too. No one has proposed by this legislation or anything else that I know of that PACs would be permitted under this if other PACs were prohibited by other law, whatever it happens to be, and I certainly would fight against that kind of distinction. If PACs are outlawed, for whatever reason, then these PACs that people would have from employee unions or whatever would be eliminated, too. There is no proposal that we change that at all.

So I just wanted to reiterate again that we really are tightening up in one area and making some minor reforms in another area, and so I look at this as strengthening the Hatch Act. You know, when we were on the floor with this last time someone had come up with, I think it was 1,500 or 3,000 different things that were anomalies, different ways that the Hatch Act had been considered in the past, and rules and regulations had been written where they were conflicting so much that people didn't know what they could do and what they couldn't do.

Well, I agreed on the floor, as I recall, last time that most of those things, a lot of them, had been worked out, but some of them have not been worked out. Just a couple of examples I used in my

opening statement this morning: Anyone can write a $1,000 check to a Federal candidate of their choice, but that same person could not go down and sit down and stuff envelopes. If they don't have $1,000 to give and don't feel that their personal family finances would permit that, why can't they, in expressing their support for that candidate—if they don't have enough money, why can't they go down and stuff envelopes at the headquarters? Well, why should they be prohibited from doing that?

Yet, this is looked at as something horrible that we are just trying to bring some equity to this. I am not trying to say that those 1,500 things are still all out there, but some of them are and those are the things that we are trying to correct here and make this fair. This is no effort to make every public employee into a Democrat or a Republican or a Ross Perot supporter or an independent. All it is is just an attempt to bring some equity to this so that people in the civil service are not discriminated against unnecessarily, and that is all that this thing does.

I say I come as a convert to this. I came to the Congress originally some years ago dead set against any Hatch Act changes. When I looked at some of the ridiculous ways the Hatch Act had been interpreted, I thought it was so unfair that I went over to the other side and started supporting Hatch Act reform, and that is what we are doing here. These are rather minor reforms, as I see it. Yet, these reforms have been pointed out as being so horrendous that they are about to upset Government. I just don't see them as having that effect at all.

Senator ROTH. Well, Mr. Chairman, I don't intend to carry on the debate, as we will have adequate opportunity to do that in the future.

Chairman GLENN. I am sure we will.

Senator ROTH. From my own point of view, I find it very hard to follow the argument that this is not basically undoing the Hatch Act, and let me say that as I indicated earlier, it is ironical to me. Last year in our campaign reform legislation, we did away with union-connected PACs, and yet here we are today proposing to do the opposite.

It is significant to me that the most sophisticated professionals of the Federal employees do not support the change and, in fact, feel that the Hatch Act has and continues to work effectively.

Chairman GLENN. Well, now, what was that poll on, if you would yield for just a second, because I don't know that there has been any poll at all that I have seen that really spells out exactly what we are talking about in this Act and then polls people as to what they think about it?

Senator ROTH. Well, this was basically on whether or not the Hatch Act should continue as is.

Chairman GLENN. Yes, it should continue. I would vote with them on that.

Senator ROTH. As I say, I think most of them see this particular piece of legislation gutting the Hatch Act as we know it, and I think we can argue all day. You can point to those who favor your point of view. I can point to *Common Cause,* the *New York Times*, and others.

But in any event, we do, as you know, want to have additional hearings in order to have the opportunity to bring some witnesses on the other side so that we can fully explore this what I consider very critically important piece of legislation.

Chairman GLENN. Well, let me address that. I hadn't planned to do this, but since you brought it up I will bring it up. I was going to talk to you privately about this, but I was handed a letter this morning that now requests an additional day of hearings at which there are going to be 4 or 5 or 6 additional witnesses brought in to testify in opposition to this.

We originally planned to bring the Hatch Act up this year. We had a couple of years of previous debate about this. I felt that there was very little that was going to come out by new hearings, but we were duty-bound to have hearings and we scheduled those early on because we had had a lot of requests to bring the Hatch Act up and get it going. We wanted to get it on the agenda over there so that the Majority Leader could work it in at his discretion on what would be the best time.

We had had support from the administration. We had had comments from the President and Vice President when they were still candidates about their support for Hatch Act reform, and we knew personally from their own personal comments that they wanted to bring this up fairly early, so I was trying to accommodate that. So I wanted to bring this up to accommodate everybody that had an interest in it. I didn't think there was anything brand new that was going to be brought out. So we had an original schedule on this, an original hearing, for 2 February.

Now, I talked to staff about this and there was some objection on the other side, and so I agreed that a February 2nd hearing was a little bit fast on this thing if there was more discussion that was going to be needed on it, and it was questioned as to whether the OMB could do the job that it was supposed to do in that period of time in commenting on this. So we set it back a couple of weeks; we set it back to the 17th of February and announced that.

Then I got a letter from Senator Roth on January 26 that requested a delay until the OPM Director was nominated and was in place, and I thought that was reasonable. I didn't argue about that. I thought that was quite reasonable because OPM was going to have to administer this whole thing, and so to have the new OPM Director comment on this, I thought, was quite reasonable. So we set this back to wait until Mr. King or whoever the nominee was going to be—I believe we knew that he was about to be nominated at that time and so we set it back until Mr. King was in place.

We waited until he was in place and had some time to get over there and get his feet on the ground, and so we scheduled this hearing some two weeks ago and it was announced. So there has been time enough. This was the one hearing that we were going to take up whatever was needed to be brought up about changes in the Hatch Act, reform in the Hatch Act. We even discussed this the other day on the floor in regard to the EPA bill which is on the floor because we are having a hearing this morning and we put off the EPA until 11:30 this morning over on the floor so we could all be at this hearing this morning.

So this hasn't come as any surprise, and now this morning I am given a letter here that requests under Senate rule so-and-so and so-and-so, which I presume is all legitimate, and so on—this is dated April 27th. It says, "Dear Mr. Chairman, pursuant to rule 5(i) of the Senate Committee on Governmental Affairs and the Standing Rules of the Senate, we the undersigned Senators of the majority and the minority request to call witnesses at one additional day of hearings to testify on legislation pertaining to the Hatch Act," and it is signed by Senators Roth, Cochran and Cohen.

We will have to talk this over. As I said, I wasn't planning to air all this this morning. I wanted to talk it over privately, but you have brought it up as a request for additional days of hearings and I just wanted to go through the background of this to show that I have bent backwards at every step of the way.

With what we have seen on the floor the last few weeks, I don't know whether this slowing things down by amendment on the floor and now slowing things down by reference to Senate rules and additional days of hearings when we have known ever since January that we were bringing this up—we set the hearings back at your request. I acceded to that. I thought you were right in that and I said so, but I just don't see that the additional days of hearings are necessary, but we can talk about this privately. I am sorry it came up this morning, but we can talk about this privately and see what we can work out.

But if this is just a way of delaying things, I will say that we have the votes in Committee to pass this, I believe. We have some 42 cosponsors on this legislation on the floor, including some Republicans on it. So I don't think there is any doubt that this is going to be brought up on the floor. I also don't know whether there is any thought that there is any new information to be brought before the Committee that has not been brought up in previous testimony that has been ad nauseam, I would say, over and over and over.

We argued this on the floor. We have argued it off the floor. We argued it in Committee, we debated it in Committee over and over again the last few years. As the Senator will be the first to agree, I am sure, I have not tried to ramrod things through over the objection of the minority. I have never done that and won't do it now, but I just really question whether this is just delay for delay's sake or whether there is truly new information that the Senator wants to bring out.

For instance, if we have these witnesses, are they here this morning? I am glad to call them this morning. Do we have witnesses in the audience this morning that want to testify?

[No response.]

Chairman GLENN. I see no hands. Your witnesses are not here. This is a hearing at which we knew everything was going to come up, and so I think this delay tactic, as it obviously is—I may accede to it just in the interests of comity and making sure that everybody is heard so we can't have any questions about this. I may go along with your request and have the additional day of hearings, but I think this is just delay for delay's sake and if the Senator has had any areas he wishes to explore, I wish we would explore them this morning and get on with a vote.

Senator ROTH. Well, as you said, we are not going to resolve this here, but let me just make a few comments, Mr. Chairman. First of all, the minority does have the right to hold a day of hearings both under our Committee rules as well as under the Senate rules. There is nothing saying that we have to persuade the other side, but it is just part of what seems to me an equitable and fair approach.

Let me say one day of hearings, I agree with you, is in no way going to prevent this legislation from being acted on in the Committee and reported out and acted on on the Senate floor, but it is a very, very far-reaching piece of legislation. We think that it is important to let those who feel strongly have an opportunity to testify. As you know, we have EPA elevation legislation coming up today and that created scheduling problems.

But the point I want to make is that the request on the part of the minority, as is provided for in the rules, is not a delaying factor. I think it is only fair. We have got a new administration, we have got a new Congress, so that it does not seem to me one day is unreasonable on our part and we do feel that creating part of the record of whatever happens that it is of critical importance.

As I say, I agree with you, we are not going to resolve it here, and certainly we have always been able to work these things out in the past and I am confident we will do as well in the future.

Chairman GLENN. Well, let me ask my distinguished colleague, if we scheduled a hearing later this week, could you have your witnesses available later this week? We have a mark-up scheduled for next week and I would like to have this brought before the mark-up next week.

Senator ROTH. We do have EPA this week.

Chairman GLENN. Well, if we can work out a time later this week, will you have your witnesses available then and have the extra day of hearings?

Senator ROTH. Well, we have to contact them, Mr. Chairman. That is pretty short notice, as you know.

Chairman GLENN. I guess we will just have to talk about it privately.

Mr. King, do you have anything else to say?

Mr. KING. No, Mr. Chairman.

Chairman GLENN. Do you have any additional questions, Senator Roth?

Senator ROTH. No more questions.

Chairman GLENN. Thank you. Do staff representing other Senators have any questions they want to ask?

[No response.]

Chairman GLENN. The hearing will stand in recess subject to the call of the Chair. Thank you.

[Whereupon, at 10:48 a.m., the Committee was adjourned.]

S. 185—HATCH ACT REFORM AMENDMENTS OF 1993

FRIDAY, APRIL 30, 1993

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:05 a.m., in room SD–342, Dirksen Senate Office Building, Hon. John Glenn, Chairman of the Committee, presiding.

Present: Senators Glenn and Roth.

OPENING STATEMENT OF SENATOR GLENN

Chairman GLENN. Good morning, and welcome to today's hearing on S. 185, the Hatch Act Reform Amendments of 1993.

As many of you know, this hearing was requested by Senators Roth, Cohen, and Cochran. While we would have accommodated witnesses requested by the minority at Tuesday's hearing, we were not given that opportunity.

I would like to note that at Tuesday's hearing, Senator Roth brought up a 1987 Senior Executives Association, or SEA, survey concerning Hatch Act reform which he said demonstrated opposition by the Senior Executives to Hatch Act reform.

I have an April 28th, 1993 letter from the SEA, clarifying the results of this survey and the Senior Executives Association's position on Hatch Act reform. The SEA sent me a similar letter in 1989 when Senator Roth raised these same survey concerns.

I will enter these in the record, but I would read in part from the letter we got just a day or so ago. They start out saying they understand this subject has come up, and they say they want to clarify the purpose of the survey that they did and its results.

"No. 1, the survey was done in 1987, approximately 6 years ago."

"No. 2, SEA received the lowest response rate ever to any survey we have done—22 percent."

"No. 3, the survey results were very disappointing to the Association because they produced no definition position from the membership."

"No. 4, in addition to the low response rate, the responses themselves were very ambivalent, with a substantial number of the questions not answered."

"No. 5, only approximately half of those surveyed believe that the Association should oppose the Hatch Act Amendments, and the remainder did not specify one way or the other."

"No. 6, the Association itself has not taken a position on Hatch Act changes proposed because of the ambivalence of its membership when surveyed in 1987."

"No. 7, the turnover in Association membership is approximately 10 percent per year. In addition, Association membership has grown from approximately 2,200 in 1987 to nearly 3,200 today. This would indicate that 60 to 90 percent of the membership in the Association has changed since the survey was taken."

"No. 8, the Association concluded in our 1989 letter to you that the survey was not valid for the purpose of the Association taking a position on the proposed amendments to the Hatch Act. It has even less validity today, nearly 4 years later."

"No. 9, the Association takes no position on the proposed amendments to the Hatch Act now being considered by your Committee."

I will enter this in the record.[1]

Chairman GLENN. Senator Roth, do you care to make an opening statement?

OPENING STATEMENT OF SENATOR ROTH

Senator ROTH. Yes, Mr. Chairman. First, I want to thank you for agreeing to the request for this additional day of hearings.

The Chairman stated on Tuesday that S. 185 was "a modest reform," that it strengthens the Hatch Act, and that he can't understand why anyone would oppose such a bill.

If this legislation strengthens the law as the Chairman suggests, why is it that such a broad range of groups are opposed to changes in the Hatch Act? Public interest groups such as Common Cause and the National Academy of Public Administration are extremely concerned about the negative consequences of this bill. Groups not generally interested in the details of Federal employment, such as the National Taxpayers Union, have expressed opposition to S. 185. Other groups and individuals will be testifying this morning with regard to their concerns.

Why is it that more than 50 newspapers, the guardians of First Amendment rights, have written editorials opposed to this legislation? These are not ridiculous extremes of opinion, but the mainstay of the American public which is concerned about coercion of Government employees and the nonpartisan administration of Government.

Not only does this bill wipe out 54 years of a civil service protected by the Hatch Act, but it would prevent future presidents from providing such protection by Executive order. This bill is a break from our Nation's entire history, extending from Thomas Jefferson to Theodore Roosevelt to Franklin Delano Roosevelt to Gerald Ford and George Bush. Why have so many presidents, Democrat and Republican, promoted a civil service removed from "electioneering"?

The three members of the minority on this Committee who asked for this hearing did so because we wanted one last opportunity for thoughtful consideration of this bill. The Chairman has suggested that this legislation has been debated ad nauseam. We did not ask

[1] See pages 99–100.

for this hearing to debate the issue, but rather to ask the proponents on both sides of the aisle to think carefully about the impact this bill will have on the nonpartisan administration of Government. In my opinion, President Clinton is the first president who would sign S. 185. Proponents should think carefully about the bill they want to present to him.

This request for a hearing will not delay this bill. The Committee markup was scheduled for next Tuesday; it is my understand that it has been rescheduled for May 11th, due to our obligation to be on the Senate floor Tuesday morning to further consider the EPA elevation bill.

We understand that we are in the minority, but we are trying to appeal to the majority on this issue, on both sides of the aisle, to stop and think carefully about what they are doing. We agreed to this hearing on Friday so the majority could keep its markup as scheduled.

The individuals appearing today have thought carefully about the impact this legislation will have. We will hear from those who are advocating that certain sensitive employees be exempt from the bill, much in the same way that the 1976 bill presented to President Ford contained an exclusion for sensitive employees at the Department of Justice, the CIA, and the Internal Revenue Service. Should we exempt certain agencies with sensitive positions?

Should we create a protective band around career Senior Executive Service employees, supervisors, and managers who work directly for political appointees? These are the employees who work most closely with the political appointees and will be most subject to political pressure.

Equally important, are we really prepared to overturn more than 100 years of precedent and allow Federal employees to solicit money contributions? Both the House and Senate bills would, in different degrees, allow employees to solicit contributions.

Are we really prepared to allow Federal employees to become campaign managers and party leaders? If so, we must be prepared to deal with the abuse which is sure to follow, along with the public's believe that politics has once again crept into the nonpartisan administration of Government.

I would like to thank the individuals who agreed to appear before the Committee today. They have agreed to do so on short notice. Some have encountered pressures not to testify. Others have been pressured by various groups not to appear at all. That's a shame. What is there to fear?

Thank you, Mr. Chairman.

Chairman GLENN. Well, I would ask one question. You said they were pressured not to testify. By whom?

Senator ROTH. Well, I think there have been two things. For one, a number of organizations, it has been indicated, had to supply certain information in respect to their use of mailing and other nonprofit rights. Second, it is my understanding that one organization had pressure from other organizations that they want to work together in the future and that it would be wise not to testify——

Chairman GLENN. Well, let me clarify this before we go on. Has there been any pressure whatsoever from Committee staff or from me, or from any member on the Democratic side?

Senator ROTH. Well, I do understand that a number of witnesses have been told that there would be a requirement to supply information with respect to nonprofit mail status, how much revenue foregone, topics of the mailings, and mailings concerning Hatch Act. Those, so far as I know, were unusual requests that I am not acquainted with having been made before.

Chairman GLENN. I understand we may have some questions for the record on this from one of our members, but I think that is quite routine; I think we do that all the time. That has been done on both sides of the aisle, and there isn't any problem with that as far as I know.

Senator ROTH. Well——

Chairman GLENN. Obviously, we could get into a debate here, and we are almost on the verge of that right now, and I think since we agreed to have the hearing today, I would only say that this issue has been up for a long time. I acceded to the request of the minority when they wanted another day of hearings. They didn't have to go to all the formality of a letter, and quoting arcane Senate rules to get that. We always—I don't know that I've ever turned down a request for a hearing of either side here. We want to get both sides of all these issues. And to bring it up at the last minute, I thought was a bit much, and I expressed myself on that the other day at the hearing, and I don't need to go through that whole record again.

So I think we should get on with the hearing this morning.

Our first witness this morning is David Rosenbloom, with the National Academy of Public Administration. David, if you'll come forward and give your statement, we'd appreciate it.

TESTIMONY OF DAVID ROSENBLOOM,[1] NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, ACCOMPANIED BY ROGER SPERRY, DIRECTOR OF MANAGEMENT STUDIES, NAPA, AND MURRAY COMAROW, FELLOW, NAPA

Mr. ROSENBLOOM. Thank you. I am David Rosenbloom. I hold the title of Distinguished Professor of Public Administration at American University. I am also editor-in-chief of the *Public Administration Review*, which is the journal of the American Society for Public Administration.

I have written extensively on the Hatch Act and related issues. Some of this work was relied upon as the Supreme Court as authoritative history in its decision in *Elrod* v. *Burns* in 1976.

With me are Roger Sperry, who is Director of Management Studies at the National Academy of Public Administration, and my colleague Murray Comarow, who is the member of the public service panel of the National Academy of Public Administration.

With your permission, I would like to read our statement.

Chairman GLENN. Fine.

Mr. ROSENBLOOM. Mr. Chairman, Senator Roth, I am pleased to respond to your invitation to present the National Academy of Public Administration's views on proposed changes to the Hatch Act. My testimony today represents the view of our Panel on the Public Service and is similar to the statement provide to this Committee

[1] The prepared statement of Mr. Rosenbloom appears on page 100.

in 1988 by the late Joseph L. Fisher, then chairman of the Academy's board of trustees, on H.R. 3400, the forerunner of the legislation currently under consideration.

The purpose of S. 185 is to "restore to Federal civilian employees their right to participate voluntarily, as private citizens, in the political process of the Nation, and to protect such employees from improper solicitations."

Mr. Chairman, we fully understand the very positive motivations of those who seek to broaden Federal employees' opportunities to participate in our Nation's cherished political processes of Government.

Revisions to the Hatch Act contained in S. 185 would permit Federal employees to engage in a broader range of partisan political activities when they are not on duty. Existing prohibitions would continue, and penalties would be toughened for on-the-job partisan political activities, including the use of official influence or information for partisan purposes.

The Academy's Panel on the Public Service has considered this proposal carefully on numerous occasions and again reviewed this issue at a recent meeting. We continue to believe that the adverse consequences of permitting broader Federal employee participation in partisan campaigns and elections far outweigh the potential benefits.

Political activity by Federal employees has been a matter of concern since the early days of the Republic. However, it was President Theodore Roosevelt who laid down prohibitions that were later incorporated in the Hatch Act. His Executive Order 642, dated June 3, 1907, not only prohibited certain Federal employees from using their official authority or influence to interfere with or affect the results of elections, but it also prohibited those in the competitive civil service from taking an active part in the management of political campaigns.

The Hatch Act, passed in 1939, extended these prohibitions to all Federal employees, including those in the excepted service.

From time to time, these legislative limits on participation of Federal employees in political processes have been called an infringement on the constitutional freedoms of speech and assembly. That question was settled when the Supreme Court held in 1973 that it did not violate the constitutional rights of Federal employees to prohibit them from engaging in plainly identifiable acts of political management and political campaigning. However, this does not preclude changing the law.

On the fundamental issue of permitting Federal employees to engage, while off duty, in the full range of partisan political activity, any change must recognize the need to balance Federal employees' rights to participate in the political life of the Nation and the public's right to a competent, impartial, nonpartisan administration of the law. In this delicate balance, the reality and the perception are both vital considerations. The appearance of nonpartisanship in the execution of law is essential to maintaining public confidence in the administrative institutions of Government. We believe the existing system provides a reasonable balance.

Whatever partisan political activity is permitted off duty would for many become the expected behavior. Those in the civil service

would soon come to believe that better assignments, promotions and bonuses depend in part on partisan political activity. Equally destructive of morale and motivation would be a growing concern that not being promoted or given a preferred assignment was due to engaging in political activity for the unsuccessful party or candidate, or for not participating at all. This is no way to attract and retain a high-quality civil service.

We believe that Federal employees' involvement in partisan political activities would erode citizen confidence in the impartial administration of laws. Many citizens would have a growing uneasiness about the objectivity of Federal employees who oppose them in partisan political campaigns and who then are involved in investigations or decisions that might affect them adversely. This could occur in numerous situations dealing with taxes, eligibility for individual and corporate benefits, compliance with regulatory requirements, and award of Government contracts. Public trust in the administrative processes of Government could be dangerously undermined.

Finally, there is the issue of transitions in administration from one political party to the other. Civil service employees' participation in partisan political activities would greatly increase the doubts of incoming administrations about the responsiveness of career civil servants who opposed them during campaigns. Even under the existing law, it has been hard for many presidential appointees to shake such doubts, even though they were almost always unjustified. Partisan political activity by career civil servants would create insurmountable barriers of suspicion in many political-career relationships.

Some argue for less drastic changes in the Hatch Act, such as permitting Federal employees off duty to engage in the full range of partisan political activity only in connection with partisan elections for local Government offices. Others argue for changes in the Act that would permit a full range of off-the-job partisan political activity by those Federal employees whose duties do not include substantive responsibilities in any procurement, leasing, contracting, benefit, and employment activities.

Aside from the extraordinary difficulty, if not impossibility, of making and enforcing these distinctions, it is unrealistic to expect such distinctions to permeate the public consciousness. Instead, the public may come to believe that political partisanship diminishes impartiality in the execution of laws.

The adverse consequences of permitting civil service employees to go beyond the scope of present practices are simply so great as to make them unacceptable. Similarly, a situation which continues to discourage a large number of our citizens from lawful exercise of political rights is also unacceptable. Questions about interpretations of the Hatch Act need to be answered promptly and clearly so that Federal employees desiring to participate more fully in the political process can feel comfortable about doing so to the maximum extent now permitted.

Nonetheless, it is the sense of our panel that if the Congress does seek to allow broader participation for most Federal employees, certain categories of employees must remain under the current restrictions. These categories are career senior executive servants and

GM–13 through 15 employees. These employees have high-level executive and managerial responsibilities to the American public. Broader partisan political activity on their part would erode the public's confidence in their neutrality and objective dedication to serving the public interest. We believe it would also put pressure, however subtly, on their subordinates to engage in similar partisan activity.

The SES and GM categories are already well-established in personnel law and regulation and are treated differently from other employees with regard to classification and pay. We do not believe that excluding SES and GM employees from broader partisan political participation would create definitional or administrative difficulties. We do believe that it would be for the good of the Nation.

Without exception, we oppose modifications of the Hatch Act.

Mr. Chairman, this concludes my prepared statement. We would be pleased to respond to any questions you may have. Also, Professor Comarow has some prepared remarks.

Chairman GLENN. Fine. Go ahead.

Mr. COMAROW. Mr. Chairman and Senator Roth, my name is Murray Comarow. I have had the pleasure of testifying before your other Committee, Senator, on reform of the OMB. I have had 30 years of Federal service and roughly 20 years of teaching and practicing private law.

I have been a Fellow of the National Academy of Public Administration for almost 20 years, and during all of that time, the Academy has taken positions which by and large protect and enhance the status of the career civil service in this country. This is simply another such step.

The Academy believes in the importance of a politically neutral and competent civil service, and believes that this step would undermine that political neutrality.

The question should not be approached, in my opinion, as simply the exercise of a right. Individual rights are extremely important. I am sort of a First Amendment freak, and yet I would have to defend the opposing right, if that's the correct word, of the Government to impose restrictions on free speech upon certain employees, especially those in the military and in the intelligence agencies.

Most Americans have a right to strike. I believe that the present legislative policy which prohibits Government employees from striking is a correct position and a reasonable balance between the individual rights of Americans and the general rights and needs of the Government.

The question naturally arises—where is the pressure for this bill coming from? It clearly is not coming from Government employees. One poll that I examined indicated that only about three out of 10 Government employees support this kind of bill. The poll which Senator Roth mentioned earlier indicates that Government people are quite ambivalent about the bill.

The pressure is coming from organized labor, the same group that, if I were the president of a Government union, this is precisely what I would do, because I know that it would enhance my already considerable influence.

Mr. Chairman, in a complex society, a competent and politically neutral career service is not a sort of added attraction; it is an absolutely essential concomitant of a democracy. This bill would open the door not only to political pressure but, as Professor Rosenbloom has at least intimated, there are a certain number of people in any organization who actively seek ways to please their political superiors, and I believe that this will in time undermine public confidence in an extremely serious way and to the detriment of our democratic system.

Thank you.

Chairman GLENN. Thank you. Further statements?

Mr. SPERRY. No, sir.

Chairman GLENN. Good. I have a couple questions before I turn this over to Senator Roth.

It has been argued that the current Hatch Act precludes career civil servants from labelling themselves as Republican or Democratic civil servants; right? Is that correct?

Mr. ROSENBLOOM. Yes.

Mr. SPERRY. Yes.

Chairman GLENN. Currently, civil servants can label themselves, though. A civil servant can wear a political campaign button on the job. A Federal employee can wear a button that states he is a Republican, a Democrat, who he supports, whatever. Under this bill, S. 185, a Federal employee could no longer wear such a button.

Under current law, the letter carriers can attend political rallies in uniform. Under S. 185, this would be prohibited.

I just use those as examples, because under the bill, what I have stated repeatedly at hearing after hearing over the past several years is true, and that is we tighten up on political activities on the job. We prohibit everything; in fact, put in a very stiff penalty—I think it is $5,000 and 3 years in jail as a penalty—which was not in previous law, for any violation of people on the job. You couldn't even wear a campaign button.

But to balance that, we loosen up a little bit off the job, for such things as you could carry a poster at a political rally; if you don't have $1,000 to give to a candidate you want to support, you can go stuff envelopes, which is an in-kind contribution of time.

I just find it very difficult to find anything really wrong with that. What we are saying in effect is that it is just as fair for people to have some political support they can give with their own hands by stuffing envelopes as it is for the people who can afford to give $1,000 to a candidate of their choice.

I have never dealt with any piece of legislation, I don't think, where such great and horrendous results were supposed to come from comparatively small bits of correction in what we think is just fairness in the law. And it is fairness. And I say this having come as a convert to this. When I first came to the Congress, I would not have voted for a change in the Hatch Act for anything. But then I got into it when I got onto this Committee, and found out what the Hatch Act had really been doing, and the—I forget whether it was 1,500 or 3,000—different rules and regulations at that time that had been put out under Hatch Act to where people didn't have any idea at all about what they could do and couldn't do.

So we thought, well, it makes sense to try to correct some of that and let people know—these are Americans; we've got a couple million Americans out there in the civil service, and they are Americans like everybody else—can't we make some sense out of this?

So under the bill, just as an example, Federal employees could carry posters at a political rally; they could distribute campaign material or stuff envelopes—this is all off the job—they could give in-kind contributions of their own efforts as opposed to giving $1,000. They could participate off duty in voter registration drives or phone banks. This is all provided they did not wear any uniform or insignia that would identify them as a Federal employee or postal employee. And under the bill, they still could not run for partisan elective office. They still could not solicit campaign contributions from the general public or subordinate employees.

All political activity on the job would be prohibited completely; off-the-job, though, we loosen it up to that extent. So I just think this is a matter of fairness, and as I say, I came as a convert to this.

We mentioned the sensitive employees, too, under the 1976 Act, I believe. I would note that the 1976 Act exempted sensitive employees, and if that is being held up as an example of a good bill—I don't know whether you meant that or not—but if that is being held up as an example of a good bill, I would say that the 1976 bill allowed Federal employees to run for partisan political office. This bill does not. It allowed Federal employees to raise money for political campaigns from the general public—Federal employees going out and soliciting the general public for campaign funds in that 1976 Act. S. 185 prohibits that, absolutely.

Those are more statements, I guess, than questions.

Senator ROTH.

Senator ROTH. Thank you, Mr. Chairman.

One of my concerns at the current time is the lack of confidence in government. Unfortunately, many people, the public in general, look upon Government as a cause of problems rather than a solver. What worries me about this proposal at this time is that it seems to me we are moving in a direction that will only erode confidence further. If the public sees or perceives the Federal employees as being partisan in administering the laws, they will have even less confidence.

Do you think this timing is a serious consideration and that this is a serious problem from the standpoint of competence in Government?

Mr. ROSENBLOOM. Yes, I do, and if I can speak for myself—I can't really speak for the whole panel, but I believe that the Panel on the Public Service does as well—I think that aside from the perception of partisanship, there is a problem of potential coercion. And once, of course, people are allowed to engage in activities, I believe that there will be some subtle pressures for them to do so, and over the years it may become the norm for them to do so.

Now, I know the bill does contain stiff penalties against coercion, but we have lots of regulations in Federal personnel that prohibit practices which nevertheless occur. Back in 1988, for example, the Merit Systems Protection Board did a survey with regard to sexual harassment and found that even though it is prohibited, of course,

42 percent of all female Federal employees, according to that survey, felt that at one time or another, they had been sexually harassed. We know we have regulations against discrimination—we have Equal Employment Opportunity regulations—and yet in 1987, according to the *National Law Journal* study of that year, there were some 17,000 cases or complaints of discrimination, prohibited discrimination, only 91 of which resulted in clear findings of discrimination that were accepted by agencies.

We know we have regulations against unfair labor practices, but yet we have some 3,000 unfair labor practice charges filed each year with the Federal Labor Relations authority.

So my feeling is that even though the bill contains some strict prohibitions on coercion, that it will be hard to implement those prohibitions and that, as time goes on, partisan political activity by Federal employees, including upper-level Federal employees, is likely to become common and probably the norm, in which case I think the public will perceive that the Federal service is not politically neutral, but that it is partisan, or at least it is heavily influenced by partisanship.

Senator ROTH. Is this so-called division between what you can do on the job and off the job that significant, or will that be such a blurred line that it will not have much effectiveness? In other words, if pressure is put on you off the job, is that not going to have any effect or impact when you are on the job?

Mr. ROSENBLOOM. I think that the pressure to do things off the job, if there is pressure, and an effort to resist that pressure would in fact probably have something to do with treatment on the job.

You may all remember that back in the mid-1960's, Senator Ervin introduced the Bill of Rights for Federal Employees, which was aimed at prohibiting coercion. At that time, there was coercion of Federal employees to engage in all kinds of projects, including beautification projects, buying light bulbs for playgrounds, and activities like that, which came out during the hearings on his Bill of Rights for Federal Employees. What I'm getting at is his feeling, then, was that parts of the Federal service were rife with this kind of pressure, and it is difficult for employees to resist; inevitably, resistance does have an impact on how they perceive their treatment on the job, if not the actual treatment itself.

Senator ROTH. Yes, sir?

Mr. COMAROW. If I may comment, Senator Roth, there certainly is the danger of pressure. But I see this more as the creation of an incentive system for Federal employees to behave in certain ways. People tend by and large to respond to incentives, and if they perceive incentives to become politically active in the interests of their superiors, a certain number of people will do so without any pressure from above at all.

Senator ROTH. Well, it seems to me it puts the Federal employee in a very, very difficult position because, as you say, whether it is incentives or pressures or whatever, there is the desire to do that which will help you advance your career.

Mr. COMAROW. Exactly.

Senator ROTH. And I think the important thing to keep in mind is that we aren't just talking about the current administration; we

are talking about future administrations as well. So this is not directed at the Clinton administration or the Democrats, or at Republicans. The fact is when you remove it, there are going to be those who will one way or another make it very clear if you want to get ahead, you had better be cooperative in what are partisan matters.

The problem with the poor Federal employee, if he or she responds to that, then your next administration comes along of the opposite party, and the new politicals are going to have no confidence. So you are undermining the confidence in the system, and it just seems to me the current system has worked relatively well. Yes, there have been some problems. I mean, they constantly bring up that there are 3,000 rulings; we all know that isn't correct, and something should be done to spell out with greater clarity as to what can and cannot be done. But essentially, down through the years, since the 1940's when this legislation, the Hatch Act, was enacted, it has worked, I think, remarkably well. I think the public—do you agree—has a perception today that as a general rule, the laws are enforced in a nonpartisan way?

Mr. ROSENBLOOM. I would agree with that, yes.

Senator ROTH. You mentioned that if the Hatch Act goes through, certain people should be exempted. Would S. 185 be improved by an amendment which provides an exclusion for supervisors, managers, and career Senior Executive Service employees? That's the group that will probably have the most pressure from the political appointments. Should there be some kind of band of neutrality to try to prevent any administration from imposing its will on the work establishment?

Mr. ROSENBLOOM. Yes, I believe very strongly that there should be such a ban, some kind of continuation of the present restrictions, although they might be clarified. It does seem that since this has been an issue since the days of Thomas Jefferson, it would make sense not to do away with the Hatch Act in its entirety, but if we are going to modify it substantially, why not start at the levels below supervisor and see how it works out; and then if it works out so that the kinds of fears or concerns we have don't materialize, at some other time, the restrictions on the political activity of people above, as in the SES or the GM or supervisors, could be lifted.

Senator ROTH. In 1976, the Hatch Act legislation presented to Ford provided an exclusion for sensitive people, employees of the Department of Justice, Internal Revenue Service, Central Intelligence Agency. S. 185 only provides an exclusion for the Federal Election Commission.

Would S. 185 be improved if there were an amendment excluding these sensitive employees?

Mr. ROSENBLOOM. I think it would be improved insofar as it was relatively easy to identify the categories of sensitive employees, and there was a relatively bright line between them and other employees.

Senator ROTH. The Senate and House bills differ in that under the Senate bill, Federal employees would be barred from running for any partisan office and from soliciting money contributions from

the general public. That is not the case with the House bill. Do these differences factor into your views of S. 185?

Mr. ROSENBLOOM. Yes. I think it is critical that whatever changes are made, they not include allowing Federal employees to solicit funds from the general public. I think the potential for the public to construe the Federal service as partisan and not objective in the administration of the laws would be considerable if Federal employees were able to off-the-job solicit funds from the general public.

Senator ROTH. Gentlemen, I greatly appreciate your being here today and giving us the advantage of your expertise. It has been very helpful.

Mr. Chairman, those are all the questions I have at this time.

Chairman GLENN. Thank you, Senator Roth.

I mentioned the 3,000 or so rules and regulations, many of which were conflicting so that Federal employees didn't know where they were going. It is absolutely correct, as Senator Roth says, that those have been cut down now, and they have been simplified. I forget how many hundred we are down to now, but it's quite a few still, as I recall. So I stand corrected on that. I didn't mean to imply that there are all these 3,000, and things are still out there. As a result of our previous hearings, they have gone through and simplified some of these things. But there is nothing in the law now that says we can't drift back up as people bring things up and try to get clarifications.

Senator ROTH. Would the Chairman yield for a comment?

Chairman GLENN. Surely.

Senator ROTH. I'll be happy to support legislation that the number of such rules be limited to the current 29 and cannot be added thereto.

Chairman GLENN. Well, no, I would not agree with that, and I would fight that one on the floor, because I think if there are needs that are shown in the system to make it better and to make it more fair, I wouldn't want to limit it by some arbitrary rule on the Senate floor that just says we can't have above a certain number of rules. That would be silly, and I think probably if we presented it that way on the floor, you'd be hard-pressed to vote for your own amendment.

Let me just ask a couple of additional questions, and I know we have other witnesses waiting. I presume you gentlemen will all agree that we should not let Federal employees, civil service people, run for partisan elective office.

Mr. ROSENBLOOM. Agreed.

Mr. SPERRY. Yes.

Mr. COMAROW. Yes.

Chairman GLENN. And I presume that you would agree that they would not be permitted to solicit campaign contributions from the general public or from subordinate employees as part of this bill.

Mr. ROSENBLOOM. Yes.

Mr. SPERRY. Yes.

Mr. COMAROW. Yes.

Chairman GLENN. I would ask you this. What is wrong with letting people who already have a right to make a contribution of up to $1,000 to a Federal candidate, but they don't have $1,000—most

civil service employees are not wealthy people, as you know from experience that some of you might have had—and I see a couple of heads in the audience nodding also on that one—so what is wrong with letting people who don't have up to $1,000 or any part thereof to contribute and to be able to say, "In my off time, I'll go down and stuff envelopes"? What's wrong with that?

Mr. ROSENBLOOM. There are two potential problems with that. One is, of course, that if it is totally voluntary, then there is no infringement on their rights to participate.

Chairman GLENN. Well, that's assumed going in, now.

Mr. ROSENBLOOM. OK.

Chairman GLENN. And with stiff penalties if that is violated.

Mr. ROSENBLOOM. Right. Assuming that's enforceable in the environment of the Federal service, then it would in fact be voluntary. I think some of the other systems in the personnel system and the appeals system indicate that it is hard to implement some of these kinds of restrictions.

Chairman GLENN. Well, let me take it back, then, a moment. Do you think Federal employees should be prohibited from contributing to a campaign?

Mr. ROSENBLOOM. No. Voluntarily——

Chairman GLENN. Well, their actions with their hands are voluntary. How do you know that they weren't coerced into that $1,000 check? I am asking you, do you advocate cutting out the ability of civil service employees to contribute voluntarily to a campaign?

Mr. ROSENBLOOM. No, I do not.

Chairman GLENN. Well, then, why would you disagree with them voluntarily, on the same basis, being able to stuff envelopes?

Mr. ROSENBLOOM. I don't disagree if it is voluntary.

Chairman GLENN. Well, that's the basis of the whole bill, Mr. Rosenbloom. You brought up all this sexual harassment stuff a minute ago under the Merit Systems Protection Board, and I didn't understand what the connection was. If you think I'm putting out a Hatch Act change that is supposed to advocate sexual harassment or something, that just isn't there.

Mr. ROSENBLOOM. No. I'm sorry if the point was not clear, but the point is that it is very hard to enforce these kinds of regulations in the environment of the Federal service.

Chairman GLENN. If you were to assume, Mr. Rosenbloom, that every law is going to be administered perfectly, and there will never be a violation, so we should never pass another law, then we can never pass another law on Capitol Hill. I am the first to agree that a lot of these things like Merit Systems Protection Board problems should be dealt with more forthrightly. But I don't think you would say that because it has not been used properly that you advocate doing away with the Merit Systems Protection Board because on occasion it hasn't worked.

Mr. ROSENBLOOM. Right, not at all.

Chairman GLENN. Or do you—do you advocate doing away with it?

Mr. ROSENBLOOM. No, I do not.

Chairman GLENN. OK, good. We are in agreement on that.

Mr. ROSENBLOOM. We are in agreement on that, and I don't think I am saying if the law is not enforced in one particular case that we should do away with the law; that's not the point. I think the point is that the restrictions against coercion have to be such that they can be enforced easily. Experience with the EEO with unfair labor practices in the Federal service to me suggests that it is hard to enforce these kinds of restrictions.

Chairman GLENN. Why do you say that we can go ahead with campaign contributions, then, because those have violations, too—but you say there are going to be more violations if people are allowed to go stuff envelopes. That doesn't make any sense, does it?

Mr. ROSENBLOOM. Well, correct me if I am wrong, but the campaign contributions are already allowed, are they not?

Chairman GLENN. Sure. But why should you me able to give in-kind contributions if a person doesn't have money to give?

Mr. ROSENBLOOM. Well, again, when you put it like that, of course, it is essentially a quid pro quo, one as a substitute for the other, and I have no objection to the voluntary stuffing of envelopes. My concern is whether it is voluntary or not, and that's where we are hung up here.

Chairman GLENN. Well, don't you have the same concern about whether the cash contribution or the check that's being written is also voluntary?

Mr. ROSENBLOOM. Yes, I do, but since that is already in the law, and we are unaware of a whole lot of abuse,there is nothing much to say about that.

On the other end of it, though, is the perception of neutrality. And the act of giving a campaign check is usually not public; stuffing envelopes, of course, could be private——

Chairman GLENN. That's exactly the point, exactly the point. What you are saying to me is—and you may take exception to this—but what I understand you are saying is that it is OK if there is subtle pressure to give some cash here that you can't track down because a person doesn't have to tell everybody what he just did; it doesn't come out, and as long as they don't contribute too much, probably nobody will ever pick it up on an FEC report. But if you have a little more pressure, and a person is willing to go public and say, "Yes, I'm going down there, and I'm going to stuff some envelopes off-duty," that's OK—you are saying that they have to be public about one but not about the other.

Would you propose, then, making a law that says if any civil servant writes a check of any size to a political campaign, they have to announce it right then, publicly, to their fellow workers, that they are writing that check. Would you require that?

Mr. ROSENBLOOM. No.

Chairman GLENN. Well, then, I'm just trying to make a level playing field between campaign cash and in-kind contributions. It seems to me you have to treat them both the same way if you are going to be fair.

Mr. ROSENBLOOM. Well, you can treat them both the same way, again, as long as they are both voluntary. The fear is that the one will not be voluntary, that it is more of a public act than the other the way it exists now.

Chairman GLENN. Why do you feel that one is likely to be less likely to come from coercion than the other—because actually, cash, the way it is now, it seems to me is more likely to result from coercion than having to go public and go down and say, "I'm stuffing envelopes down there with some other people," because you can keep a cash contribution or a check quiet. You can keep that quiet; you don't have to say anything to your coworkers. But it can come much more easily as a result of a superior's pressure on you than if you are willing to step out and go down and say, "I'm going to work at a campaign headquarters a little bit in my off-duty hours."

Mr. ROSENBLOOM. Well, what is the experience with the cash contributions? Do we have evidence of coercion and subtle pressures, or not?

Chairman GLENN. I don't know of any. You are the one who is talking about the coercion, not me. What do you think? Do you think there is coercion or not?

Mr. ROSENBLOOM. Well, I think apparently it works pretty well, because we don't hear about a lot of cases of that.

Chairman GLENN. Then why wouldn't it work with in-kind contributions?

Mr. ROSENBLOOM. Well, as you say, Federal employees may be in a position to be more readily able to donate labor than cash, and it is something that they are all able to do is go stuff envelopes, as opposed to all of them being able to give large cash contributions; so maybe there would be more pressure on them.

Chairman GLENN. I think we've about exhausted this subject for the moment, unless Senator Roth has anything further.

Senator ROTH. Just let me make one comment. It seems to me a significant difference is the question of private expression and public expression. One of the purposes of the Hatch Act is to ensure that our laws are administered in a nonpartisan way and that they be perceived as being administered in a nonpartisan way.

The difficulty, if you have a number of people going down with in-kind contributions, whether it is stuffing envelopes or making speeches or whatever, then the nonpartisanship is lost. I think that is one of the key goals of the Hatch Act is for the public to perceive our laws to be administered in a nonpartisan way.

Well, thank you, gentlemen, very much.

Chairman GLENN. Just one further comment. What you are telling me is that it's all right if you do it in the closet, and not right if you do it out of the closet; is that right? You can't go public with this, or you are bad.

Mr. SPERRY. Mr. Chairman, I think in fairness to David, you are proposing a change in the law. The Academy panel considered the proposed change in its prior incarnation and recently here. It has not considered the efficacy of whether or not there ought to be a change in the campaign contribution provision. We fully understand your point here. It is difficult for us to be able to compare one to the other, and I think there is a further burden when one wants to change the law as opposed to whether we ought to keep the law as it is.

Chairman GLENN. Well, the whole objective of this bill, from beginning to end, is to make it fair, to make an even playing field,

and to let people have what rights they can have without endangering Government—and if it is fair to do it one way, but you tell a person they can contribute a $1,000 check, but someone down the street who has a sick kid or something else that they must spend all their money on, and doesn't have $1,000, but they still want to be as involved as the other person—and you are saying that that is illegal, and we can't correct it because one is in law, and one isn't. That is what we are trying to correct here and make it fair.

Mr. SPERRY. We fully understand your concerns and what you are trying to do. Our concern is what the ultimate effect would be in terms of the public's perception of the neutrality of the Federal service.

Chairman GLENN. Public perception right now is that this whole thing is a sham, it is ridiculous, and we ought to correct it—and I came as a convert to that. I could have sat there where you are when I first got here 18 years ago and said exactly the same thing, that we shouldn't change one iota, not one period or paragraph, in the Hatch Act. But when I looked at it, and found out about the abuses of it and how ridiculous it was, then I became a convert, and I have been one ever since.

So I am not for unbalancing this. I want to have civil service protection, I truly do, but I want it to be fair. That's the only thing this does, and all these dire portents that are drawn up with regard to this bill are just ridiculous.

Senator ROTH. I just want to make one point very clear. Certainly, in my contacts with the public and my mail, I have seen no great drive on the part of the general public supporting a change in the Hatch Act. There are certain interested groups in Government who have the right to pursue it and are seeking it. But as far as there being an outburst of indignation and dissatisfaction with the Hatch Act, that is not true either in respect to the general public or, as far as I am concerned, with the Federal employees as a whole. There are exceptions who, of course, feel otherwise.

Chairman GLENN. Well, we could go on giving examples all day here and asking for your response, but I thank you, gentlemen. We may have some additional follow-up questions for you. Let me ask one other question. Has NAPA advocated leaving the Hatch Act the way it is? Have you done mailings on this, and do you take a position on this and try to advocate your position?

Mr. SPERRY. No, sir, absolutely not. Given the nonpartisan status of the Academy, we are precluded from doing that. We respond to your invitations to testify on issues when we are asked to do so, and we have not in any way tried to broadcast our views to others. We make them known to people when they ask, and that's basically it.

Chairman GLENN. Fine. Thank you, gentlemen.

Our second panel includes Bernard Rosen, Distinguished Adjunct Professor in Residence at American University; David Burckman, Secretary of the Association of Former Internal Revenue Executives, and Marvin Morse, delegate to the American Bar Association, of the Federal Bar Association.

Gentlemen, thank you, and Mr. Rosen, if you would lead off with your statement, we would appreciate it.

TESTIMONY OF BERNARD ROSEN,[1] DISTINGUISHED ADJUNCT PROFESSOR IN RESIDENCE, AMERICAN UNIVERSITY

Mr. ROSEN. Mr. Chairman and Senator Roth, my statement on proposed revisions of the Hatch Act in S. 185 is based on my experience as a former executive director of the United States Civil Service Commission and also as a deputy executive director and a regional director. I also served as director of personnel for the Department of State, and I have been a long-time career employee in Washington and the field.

My experience with employees of many agencies at all grade levels, white collar, blue collar, in field offices as well as in Washington, convinces me that permitting Federal employees off duty to be actively involved in partisan politics would have such serious adverse consequences as to far outweigh the desirable benefits.

Specifically, I believe it would undermine citizen confidence in the well-established nonpartisan execution of the laws. I believe it would create great distrust between political appointees and career executives, particularly when administrations change from one party to the other. And I believe it would generate employee uncertainty and suspicion that their off-duty political activity, or lack of it, plays a quiet but significant role in determining their assignments, their training, their promotions and their awards.

In all these matters, perception is reality. That these and other adverse consequences are widely perceived is evident in editorials published in 56 newspapers in 26 States following the recent actions to revise the Hatch Act in the House of Representatives. Almost all, Mr. Chairman, say that the Senate should leave the Hatch Act alone. The few that don't say that simply indicate that what the House did was not desirable.

In expressing opposition to permitting Federal employees to engage off duty in the robust business of partisan politics, the editorials evidenced strong concern that the Federal employees will be subject to partisan political pressure as they exercise their vast powers. Among the powers exercised, as we all know, by Federal employees are: explaining and enforcing laws and regulatory requirements dealing with taxes, benefits, government contracts, civil service jobs, and numerous other matters which impact on people every day and in every walk of life.

The tens of millions of people who are affected by the actions of Federal employees need to feel that there are no irrelevant considerations when these decisions are made. In such matters, trust is important. The active involvement of Federal employees in partisan political campaigns will undermine confidence in the impartiality of the civil service work force.

The *Des Moines Register* editorial said it this way, Mr. Chairman, "The public is asked to believe that Federal workers can be fierce political partisans at night and then change into completely nonpartisan civil servants by day. Hogwash."

Critics of the current law charge that Federal workers do not have clear understanding of what they can and cannot do, and therefore "play it safe" by not engaging in political activities that are legal. Surely this can be solved, as progress has in fact been

[1] The prepared statement of Mr. Rosen appears on page 102.

made, by improving the information to employees and of course, if necessary, clarifying the law without weakening it.

If Federal employees are to be permitted to campaign in partisan elections, or "electioneer," as Thomas Jefferson called it, I believe that the adverse consequences could be reduced by amending S. 185 to prohibit supervisors, managers, and executives from such activity. This is a clearly identifiable group. Continuing to prohibit partisan political activity by the almost 300,000 employees in supervisory, managerial and executive positions would make three significant improvements in the bill.

First, our Government would be able to give more credible assurance to the American people that decisions made within Federal agencies which affect their lives and fortunes will not be influenced by partisan political activity.

Second, any new administration replacing one from the other political party is far less likely to have doubts about the willingness and the commitment of career executives in the bureaucracy to help the new political leadership in every legal way to achieve its goals.

And third, there would be no basis for civil service employees to assume that their supervisors will give them better assignments, promotions and awards because of their partisan political activity.

If the Hatch Act is changed to increase the political rights of nonsupervisory employees and postal workers, it is reasonable to assume that for many of them, what is permitted will be viewed as expected. Expected or not, some Federal employees will enter the partisan political arena in a very public way, with great vigor. To increase confidence that the laws will be applied properly, the American people would need to be informed that the current Hatch Act prohibitions continue for supervisors, managers, and executives, and that these officials will be held accountable for the fair and impartial application of laws and agency policies. This, in my opinion, can help avoid an explosion of cynicism among Federal employees, as well as the public, with regard to fair and impartial execution of the laws.

Mr. Chairman, I hope my statement will be helpful to the Committee as it considers this very important subject, and I will at the appropriate time be glad to respond to questions, sir.

Chairman GLENN. Thank you, Mr. Rosen.

Mr. Burckman.

TESTIMONY OF DAVID BURCKMAN, SECRETARY, ASSOCIATION OF FORMER INTERNAL REVENUE EXECUTIVES

Mr. BURCKMAN. Mr. Chairman, Senator Roth, it is with a deep sense of appreciation that I appear before you today to express the views of my organization on what we believe may be one of the most critical junctures to face the Internal Revenue Service.

My name is David Burckman, and I have the pleasure of serving as an officer of an organization of former Internal Revenue Service executives. Our organization was formed approximately 2 years ago with the sole purpose of being whatever help we could be to an organization which many of us had served for many years.

Our organization does not take on political issues as a norm, but the passage of the revisions of the Hatch Act as currently written

may, in our judgment, seriously impair the effectiveness and impartiality of the Internal Revenue Service and its employees.

Some may remember the time years ago when rank-and-file IRS employees were permitted to take part in politics on their own time. At the same time, senior positions in the Internal Revenue Service were filled by political appointment, and the resultant scandals which resulted in congressional inquiries. Those inquiries clearly showed that because of the political pressures brought to bear on employees of the IRS, taxpayers were treated unfairly, and a number of Revenue employees were indicted on embezzlement charges. A number of very senior Service executives received prisons terms as a result of the management of the Revenue Service in those bygone days.

To correct the conditions that led to the scandals, President Truman and the Congress jointly agreed that in the future, IRS employees should be completely removed from political activities, that the only political appointments in the Service would be that of the commissioner and the chief counsel. All employees below their level would henceforth be career civil servants who stayed completely out of partisan politics.

Our organization, which includes five former commissioners from both parties, is gravely concerned now about the damage that could be done to the integrity of the IRS and to the impartial role of the Nation's tax enforcement organization by the revisions of the Hatch Act this Committee is considering.

We recognize that the bill contains protection against pressure upon employees to contribute money or to engage in political activities. But that protection does not deal with the dangers that we fear most. The IRS experience in the 1940's demonstrated that employees who were engaged in political activities often sought return favors when their candidates won. They often solicited the support of their Congressman or Senator when they competed for promotions or transfers or other kinds of on-the-job advances. Those factors forced other employees also to seek support from powerful political figures in order to advance, particularly when the higher-level positions in the office became vacant.

When IRS field officials owed their own success to political sponsors, they recognized that they were expected to respond when those sponsors asked them for return favors such as avoiding the collection of tax bills owed by certain prominent citizens, or not auditing their tax returns.

Employees with political supporters became immune to supervisors' directions and did not find it necessary to perform well in order to stay on the payroll. They also quickly learned that they did not need to follow normal office procedures, thereby making it relatively simple to embezzle money from the taxpayers.

If IRS employees are again allowed to engage in political activities on their own time, we do not see how those abuses can be prevented from gradually creeping back.

We are aware that you are considering language from the Postal Service, and if it is included in the bill, it will go a long way toward avoiding many of the pitfalls we see in the original language of the bill. Including this language would, in our judgment, be a signal

improvement in the bill—if it can make it through both houses of Congress.

But even if the postal language is included in the legislation, we still see a problem. If people are known to be active in a political party, won't that affect what people think about the impartiality of the IRS?

In our judgment, the best possible solution would be to exempt IRS employees from this bill, thereby ensuring that the highest level of integrity is maintained in our tax system. We recognize that there are many who claim that prohibiting Government employees from taking part in the political arena is an infringement on their rights as citizens. But we believe that there is ample precedent for certain levels of Government to be treated differently than others. Members of Congress must abide by rules that average Americans never face. Members of the military are prohibited from partisan political activity, and for very good reason. There are particular restrictions placed on law enforcement officials in the form of meeting certain age requirements.

There are many other examples which clearly demonstrate that Federal employees are different and must adhere to different requirements than might be found in the private sector.

We believe that working in the Federal Government is a privilege and a career to be sought by the finest from all walks of life. Refraining from partisan political activity seems to us to be a very small price for membership for those who want to serve.

Thank you, sir.

Chairman GLENN. Thank you, Mr. Burckman.

Mr. Morse.

TESTIMONY OF MARVIN H. MORSE, DELEGATE TO THE ABA, FEDERAL BAR ASSOCIATION

Mr. MORSE. Thank you, Mr. Chairman, Senator Roth.

I am an administrative law judge in the Department of Justice, and I would suppose the only witness today who is in fact currently serving under the Hatch Act.

I appear on behalf of the Federal Bar Association, which appreciates this opportunity to present once again its views on the important question of amendments to the Hatch Act. The provisions of Title 5 of the United States Code which control the extent of participation by Federal civilian employees in this Nation's political processes, and which protect those employees from improper political solicitation and overreaching are of vital concern to this Association and its members.

The FBA President, Malcolm Monroe of New Orleans, being unable to join us this morning, asked me to appear on behalf of the Association. I am Marvin H. Morse, FBA's delegate to the American Bar Association, and for many years a member of the FBA executive committee. The resume attached to my prepared remarks reflects the extent of my participation in the Association's activities, particularly with respect to the interests of career Federal lawyers.

As a former chair of the career service and judiciary sections, and as section coordinator during earlier congressional initiatives

in Hatch Act reform, I have played a role in developing FBA's position before the Committee on Governmental Affairs in 1987 and 1988.

Ours is a national association of 14,500 lawyers and judges, consisting of 100 chapters in cities throughout the country. The Association's constitution describes its mission "to advance the science of jurisprudence and to promote the welfare, interests, education, and professional growth and development of the members of the Federal legal profession." Our reference to the Federal legal profession is understood to include all who practice before or preside or work in Federal courts and agencies, and not only Federal employees.

Over 80 percent of our members and their leaders are not Government attorneys; indeed, many were never in the Federal service. Nevertheless, because members of the bar as well as Federal career lawyers and judges share a commitment in common to Federal law and have a vital interest in the integrity of the Federal legal profession, the FBA has attempted to play a role in Hatch Act reform efforts.

At the outset, I note that we have no "political" interest in the debate over Hatch Act reform. It is understandable that there are differing views on the extent of adjustments, if any, that need to be made in the existing law. Our concern is that whatever fine-tuning may be in order from time to time, the bright line between permitted and prohibited conduct has worked well since 1939 when the Hatch Act was passed. As lawyers and judges, we have been reluctant to espouse change in the absence of proof that the existing regime requires extensive overhaul.

When we last appeared before the Committee, we urged the need for legislation to define "political activity" and to explicitly exclude certain categories of Federal personnel from the reach of newly permissible political activities. We also expressed concern that the proposed new freedom for Federal personnel to engage in political activities on their own time and away from the work site can be an unanticipated invitation to partisanship.

Regrettably, we do not understand that these concerns are addressed in the pending legislation, nor have they been addressed in the continuing debate. For that reason, the FBA executive committee at its February 6, 1993 meeting adopted the resolution attached to this statement. We reiterated our position that if Hatch Act reform is inevitable, "the protection of Federal employees and the American public which they serve" requires—and these are three quotations from our resolution—a definition of political activity permitted by Federal employees; strong sanctions and structural barriers inhibiting superiors or peers from pressuring employees, either explicitly or implicitly, to engage in particular political activities, and an exclusion from the reform benefits of certain classes of Federal employees whose duties and responsibilities require them to be absolutely insulated from any possible risk in order to maintain both in fact and appearance the integrity of the Federal Government.

As to item one, absent statutory definition, expressed opinions at the time of enactment as to the permitted and proscribed activity may have little persuasiveness in the future. The opportunity to

thrust career employees into the political arena, except under the narrowest of structures, can only serve to impair the credibility of a merit-based nonpartisan civil service.

It is difficult, for example, to square the public's expectation of a nonpolitical public servant when confronted by their letter carrier or Social Security claims clerk who, off-duty, has distributed campaign literature for a partisan candidate.

As to item 2, it has been suggested that earlier versions of the reform proposal established a clear line between workplace prohibitions and off-duty permissiveness. Unfortunately, however, the opportunity for political off-duty activity becomes confused with on-duty relationships, inviting at a minimum, cronyism. Moreover, Federal workplace hours are not so neatly described as in more benign times. With flextime schedules and staggered hours to accommodate commuting and other demands, the 8-to-5 day is no longer the paradigm, introducing complexities to enforcement.

As to item 3, there are certain positions in the executive branch concerning which the public ought to be particularly assured that there is no semblance of political partisanship. The bill should recognize that incumbents of certain duties and responsibilities are in no event to be susceptible to political activity. Those individuals who should be absolutely insulated from risk of improper pressure both in fact and appearance include Federal law enforcement officers, uniformed and otherwise, attorneys generally, administrative law judges, and other independent adjudicators in particular, and election officials.

We recognize that there are contrasting views as to the constitutionality of the Hatch Act. We do not disagree lightly with those who argue that Federal personnel are discriminated against in their First Amendment opportunities for political advocacy.

We do, however, respect the Supreme Court's balancing test and agree that the present law is valid. The Hatch Act reflects a knowing compact between Federal personnel and the Government. Any alteration to that compact should respect the role of Federal personnel in their responsibilities to the public, a role not made easier if the public perceives that day-to-day governmental operations are managed by public servants susceptible to political overreaching.

I am here, as you know, representing the concerns expressed by the Federal Bar Association. By good coincidence, I share those views. As a personal comment, I note that I have served as assistant general counsel of the General Services Administration and of the former Post Office Department, and as assistant administrator of the Small Business Administration. In those merit appointments, in agencies known not to be free of political pressure, I never once was subjected to improper influence, importuning solicitation, or the appearance of such improprieties. I am apprehensive that my successors, in a regime pursuant to S. 185 in its present form, no matter how well-intentioned, might not be able to say the same.

Years ago, I litigated cases for the American Civil Liberties Union and the NAACP Legal Defense Fund. Even now, I am a contributor to the Lawyers Committee for Human Rights. I find neither those experiences nor that commitment inconsistent with

skepticism about significant alteration of the Federal employee political activities playing field as it exists today.

I thank you for providing the Federal Bar Association the opportunity to express its concerns.

Chairman GLENN. Thank you. Thank you all for your statements.

Mr. Rosen, I wanted to make sure you understood that as to your comments about the House bill—and you went on a little bit about the House bill—that is not this bill.

Mr. ROSEN. I know that, Mr. Chairman.

Chairman GLENN. And I don't want anyone to think that I am accepting your comments about the House bill as though you are commenting on this, because they are completely two different things.

Mr. ROSEN. I believe all my comments, Mr. Chairman, relate to S. 185. None of my comments related to the House bill. I indicated in my more detailed prepared statement that I was aware of H.R. 20 and that there were differences between H.R. 20 an S. 185, but my comments relate entirely to S. 185. I excluded the distinctions.

Chairman GLENN. All right. You then went on in your statement—and I won't read the statement here—to comment about the newspapers around the country, 53 of them in 20 States or whatever, that commented about some of these things. I believe at least most of the ones I have seen in Ohio, when that big spate of editorials came out all over the country from whatever source they were engendered—maybe it was just because the House had worked on this—that most of them referred to provisions in the House bill, not in the Senate bill.

Mr. ROSEN. Well, while I can't differ with you on Ohio, Mr. Chairman, I did read not only the 53 that I referred to in my testimony, but I subsequently received 11 more, read every word in them, and I do have to tell you that the references to the fundraising were minimal in these 64. Overall, they just wanted to leave the Hatch Act alone. And the references to that provision, while they appeared, as I indicated in my testimony, there was no question that it was not the dominant influence, sir.

Chairman GLENN. Well, just a personal experience—I ran for office last year, and I visited editorial boards all over the State of Ohio, one after the other, all the major newspapers and a number of the minor ones in Ohio as well. And once I explained what we did with this, even though they might have had a preconceived idea about it, without exception, when I said what the bill actually does as opposed to what their preconception was, from whatever source, they didn't seem to have any problem with it.

Mr. ROSEN. With all due respect, Mr. Chairman, you also favored me with a letter in response to a letter I had written you, and the major example in the letter was one that you discussed here earlier about stuffing envelopes. I must say, Mr. Chairman, that my experience with executives and managers and supervisors in Washington and in the field indicates to me that as important as stuffing envelopes is, and it is very important, that if they get involved in partisan politics, they will put forth the intelligence and the energy that they have in the more vigorous parts of our robust political process, and that really is what I was focused on, sir.

Chairman GLENN. Well, I presume, then, that you are also not in favor of permitting any political contributions.

Mr. ROSEN. No, I have not said that.

Chairman GLENN. Well, how can you make a difference between the two?

Mr. ROSEN. To me, the issue is entirely—because, as you know from my comments, the issue revolves around the public posture in it. In the one, it is the Federal Government employees going out and getting involved actively and publicly; in the other, they are making a personal decision, as they do on many matters. I for one do not believe that Federal employees get pressured to make cash contributions.

Chairman GLENN. You don't?

Mr. ROSEN. No, I do not.

Chairman GLENN. You don't believe there is any pressure that ever comes out from superiors or from anybody else—you don't think there is any pressure at all for a political contribution?

Mr. ROSEN. I didn't say "any," sir. What I said, Mr. Chairman, was I believe—and we have a work force of almost 3 million, and I will just deal with the 2.2 million in the competitive civil service and merely suggest to you that it would be the rarest of instances where anyone would say to someone in the competitive civil service, "You ought to make a cash contribution to this campaign or that campaign," that is, in terms of a supervisor saying that.

Chairman GLENN. And you think if people go home at night, they go home to Alexandria or wherever they live, and they want to go down to the local place and stuff some envelopes or participate in a phonebank or something like that, or tack signs on the posts, and things like that, that they would be subject to wide coercion to do that than they would to make a cash contribution?

Mr. ROSEN. I am not suggesting that they would be coerced into doing that. There is nothing in my testimony that indicates that.

Chairman GLENN. No, but I was trying to get the difference between cash and in-kind contributions. You said you have never known them to be coerced into giving cash, but you then said that you thought it was wrong for them to make in-kind contributions.

Mr. ROSEN. Yes, but I did not indicate that they would be coerced into giving in-kind contributions.

Chairman GLENN. Well, then, what is the objection to it?

Mr. ROSEN. I am suggesting that the Congress in its wisdom drew in the Hatch Act in 1939, that drew that distinction and indicated these various prohibitions that were then laid out further in rules, I am merely suggesting to you that that places the civil service employee into the public arena of partisan politics.

And I am suggesting also, Mr. Chairman, respectfully, that it would not end with stuffing envelopes; that the supervisors, managers, executives, and many nonsupervisory employees who are professionals, have capacity and ability, Mr. Chairman, to go way beyond stuffing envelopes and operate in the public arena.

Chairman GLENN. Well, let me tell you something they are permitted to do right now. It is absolutely legal for a person to go home and put a big sign out in the yard—"I favor Bush," or "I favor Clinton," or whomever the candidate is. Do you think that should be prohibited? That is certainly partisan—and that is permitted.

Mr. ROSEN. I think this is up to the Congress and up to the administration of the laws to decide if that is unreasonable, and if that is unreasonable, to exclude it.

All I am suggesting, Mr. Chairman, is that the sweep of S. 185 in eliminating the prohibitions that it proposes to eliminate are so serious that they really should be unacceptable, serious, and would produce the adverse consequences that I laid out in my testimony here.

Chairman GLENN. Let me just make sure that everybody understands the differences between the House bill and this bill, because the House bill does not include any penalties; the Senate bill has 3 years in jail, a potential $5,000 fine for coercion, and if there is a second violation of the Hatch Act, it is mandatory dismissal—it wouldn't be up to the boss; they'd have to be kicked out, fired. That's pretty tough.

The House bill also allows running for partisan local office and allows solicitation from the general public. I could never vote for something like that; we don't permit that in this bill, and I will note vote for that. If we can't come out of conference with something that takes out some of those objections, well, then, we just won't come out of conference with anything, that's all. I think that is wrong.

Mr. ROSEN. Well, I agree with you, Mr. Chairman, that that is wrong and shouldn't be in there. But I also believe that the lifting of the other major prohibitions that are in S. 185 are equally wrong. I think all the House bill does is make the cheese more binding on this issue, sir.

Chairman GLENN. OK.

Mr. Burckman, when you referred to when jobs were political and so on, and the bad things that happened—was this after the Hatch Act came in, and were the people that you represent not "Hatched" at that time?

Mr. BURCKMAN. Yes, sir, but if memory serves me, the Hatch Act came in in 1939. The scandals in the IRS occurred in 1940's and 1950's.

Chairman GLENN. Were they not "Hatched" then?

Mr. BURCKMAN. Yes, sir.

Chairman GLENN. OK. Well, what had happened, then? Was the law just not being enforced, or what?

Mr. BURCKMAN. No, sir. What happened was that in those days, senior positions in Internal Revenue were filled by political appointees. They weren't violative of the Hatch Act. That was the system in place.

Senator if I may, there has been a great deal of dialogue here today about pressure on the Federal employee. And if I may, I'd like to call attention that I am only talking about Internal Revenue Service; my comments do not go to the entire Federal Government. But I don't think there has been much consideration given to what I would term the ambitious employee who wants to get ahead. And we keep talking about stuffing envelopes. OK, so I'm ambitious, and I go and talk 50 of my fellow coworkers into helping me stuff envelops, and I make it known to the person who is running for office how many hundreds of thousands of envelopes I got out. At some point in time, there is a very good chance that I may go to

that candidate, if he or she wins, and say, hey, look, I need some help.

It isn't just pressure down; it is pressure up that I am concerned about.

Chairman GLENN. I think—and correct me if I am wrong—but I think what you just described is prohibited under current law, and I don't think we change that.

Mr. BURCKMAN. How is it prohibited, sir?

Chairman GLENN. You can't give favoritism for political activity.

Mr. BURCKMAN. That's right, sir.

Chairman GLENN. Well, that's prohibited by law now. What's the difference?

Mr. BURCKMAN. Well, how do you police it, sir?

Chairman GLENN. Well, we just went through that a little while ago. The fact that a law is not adequately enforced doesn't mean that the law is bad or that we should ignore it.

Mr. BURCKMAN. No, sir; I agree. But again, my comment pertains only to Internal Revenue. When you open the door to partisan political activity by someone in the evening, and then tomorrow, he is going to sit across the table from and audit a taxpayer, I submit to you, sir, that there is another kind of pressure that exists, because revenue officers and revenue agents are in small towns all over America. They aren't just in major cities——

Chairman GLENN. I realize that.

Mr. BURCKMAN [continuing]. And people know who they are.

Chairman GLENN. Sure, I know that, and I am concerned about your point. But I presume, then, if you are going to follow this line logically, that you would advocate stopping any contributions.

Mr. BURCKMAN. In the Internal Revenue Service?

Chairman GLENN. In the Internal Revenue Service, they should not be permitted to make any contribution.

Mr. BURCKMAN. I think that's a fine idea.

Chairman GLENN. That they be prohibited.

Mr. BURCKMAN. Yes, sir.

Chairman GLENN. OK. Why? That's liable to be used the same way you said before.

Mr. BURCKMAN. Yes, sir.

Chairman GLENN. Well, I just think you are taking too much away from people who are honest people; they aren't trying to bend the system. They are honest folks. They are trying to do their job out there. If you go home at night, and you want to run for school board, or you want to be partisan or do whatever, or you want to contribute to a candidate of your choice—I just don't think everybody is out to diddle the system that way. I think we have honest people out there, and there are going to be violations under whatever law, and we have got to catch those people. That's the reason we have put in stiff fines under the proposal here. But I think to say that you are taking a whole class of American citizens, and not to allow them to make a contribution—I'll tell you what I favor, and I have come out for this recently here not too long ago. I think we ought to take contributions out completely on Federal offices and make Federal support for Federal elections; that way, we'll take all this garbage out of it, the PACs and everything else we've got—that is at the heart of the problems of our system. So I favor

Federal financing, and I have come around to that over the years just because I have seen enough on the other side.

So I might at some time agree with you, but not just to take one class of citizens who are honest people, who are interested in what is going on in Government, who are part of Government, and they can make a voluntary contribution; I don't see anything wrong with that right now.

Mr. BURCKMAN. Sir, I agree with you, except the one class of citizens we are talking about right now are the people who have the ability to make value judgments about how much money a taxpayer owes. And I submit to you, sir, that is a different kind of Federal employee.

Chairman GLENN. OK, but I want to submit for the record—and you bring up a good point—a letter from the Internal Revenue Service that describes to us for the record exactly the system that is gone through, the random selection and so on, which goes a long way toward cutting out the abuses that you are talking about that could occur.[1] I think the IRS has done pretty good. Now, the IRS has a lot of other problems, and this Committee has worked very closely with them. There is the modernization program, which I won't get into now, because we have had hearing after hearing after hearing, and I just hope they get that thing straightened out sometime within the next few years—but that's a different subject and not the subject of today's hearing.

Mr. Burckman, in requesting your testimony today, a member of my staff spoke with Mr. Ed Preston of your organization, who said that if we adopted an amendment recommended by the Clinton administration, we would go a long way toward meeting AFIRE's concerns with S. 185. Now, we are looking at that, and I don't have much doubt we will probably adopt that. It is my understanding that their amendment will be based upon language in the Postal Code which bars political recommendations for Postal Service employees. If we adopt that amendment, does that take care of some of your objections to this?

Mr. BURCKMAN. Some of them, yes, sir; not all of them.

Chairman GLENN. Not all of them. You would still be opposed to 185.

Mr. BURCKMAN. Yes, sir, I would.

Chairman GLENN. OK.

Mr. MORSE. Mr. Chairman, might I respond further to a subject that has been discussed with the other witnesses?

Chairman GLENN. Surely.

Mr. MORSE. That is the matter of stuffing envelopes, if I may—and I don't mean to denigrate that as an activity. I think the problem, with all respect, is that both the present law and the pending legislation do not define political activity. We have developed a body of interpretation in the present law which leads us to the posture, as the Chairman described, that an employee can wear a campaign button. And, as anticipated under the language of the bill if enacted, the employee could stuff envelopes, which today he could not do, but could not wear a button in the future—the difference being whether it is on the job or the off the job.

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[1] See page 116.

Chairman GLENN. Right.

Mr. MORSE. So you know where I am coming from, by the way, Senator, I was on a program in Cleveland last September—not having been able to obtain a bumper sticker at any convenient location in Washington, I went to the Glenn headquarters and bought a Clinton campaign sticker, which is still on my car—although I have some doubts in light of the President's posture with respect to the employee situation today whether I should keep it on there—however, the point is that under present law, it is my understanding that I can in fact keep a bumper sticker on my car——

Chairman GLENN. You may be interested to know I'm sort of on your side on that one, and I have told the President that, and we have discussed this publicly, as a matter of fact, because this Committee worked very hard through the years to get civil service pay up to where it is comparable to regular civilian pay. We have taken the lead in that, and we had things going pretty good, with the Pay Comparability Act of 1990 and so on, and then we've sort of gotten the rug pulled out from under us, at least temporarily, on that.

Anyway, go ahead. I didn't mean to change the subject.

Mr. MORSE. Well, I think the underlying question is not stuffing envelopes, but as I understand the Act, the Chairman is using that as an illustration, but what the Act contemplates is that an employee—this would be proposed section 7323—could take part "in political management or in political campaigns." So I think you have a starting point when you speak of stuffing envelopes, but that is just one of a whole gambit of potential activity. And I really think in fairness to the dialogue that it is not a tension between political cash campaign contributions, which we can all make now—and with respect to my co-witness here, I would not want to take that away—but it doesn't start and stop with stuffing envelopes. I think that is just an illustration of the dividing line between on-duty and off-duty.

Chairman GLENN. Well, I didn't mean I was going to restrict everybody just to the envelope business; don't get me wrong.

Mr. MORSE. Well, a simple amendment would take care of that, obviously.

Chairman GLENN. OK. Well, you know what I meant by that. I was using it as an illustration of that harmless, benign political activity that goes on in every campaign. And I am glad you were in our headquarters in Cleveland, incidentally.

Senator Roth, go ahead. We're letting time get away from us.

Senator ROTH. Thank you, Mr. Chairman.

Let me make a couple observations before I ask any questions. First of all, while we are considering here S. 185, it is also true that before we get legislation that is enacted into law, there will be a conference, and the House bill goes much further than the Senate bill.

I would also point out that Mr. King indicated that the administration would sign whatever came out. I would just point out that the House bill permits solicitation of the public, with certain exceptions, and also permits running for office. So no one here can say exactly what the final form of the legislation will be, although I have to say I suspect there will be legislation reported out of a conference.

The second point I would like to make is that even under S. 185, we aren't just talking about stuffing a few envelopes. S. 185 goes much further—you can hold office in a political party; you can manage, organize and participate in political campaigns and meetings; you can distribute partisan campaign literature and solicit votes; you can publicly endorse partisan candidates and urge others to support them.

Now, let me ask you this question. Let's say in this last campaign a high civil servant headed an organization endorsing George Bush for President, and we have an election of a new President. Do you think that that Federal employee who was active in campaigning for President Bush is going to have the same opportunity that he would otherwise have had? Mr. Rosen.

Mr. ROSEN. Senator, that one is a real easy pitch that you gave me, and I appreciate it. It is unquestionable, sir, that that particular Federal employee would have great difficulty, particularly if he was a career manager or career executive.

May I just say this, Senator Roth, that when I had the great privilege of being in the civil service and occupying key positions, during change in administrations, there were many instances where presidential appointees came to me and asked me for advice on how they could move out their senior career executives. Why? Well, it is a product of the last administration; it is a holdover. I can't depend on that individual. So it was very helpful to be able to first explain to them about the Hatch Act and the prohibitions and the fact that over the decades there has been built a nonpartisan civil service, and that that civil service can serve a new administration in every legal way, and that they can depend on them. Almost invariably, Senator Roth, when 6 months later or 8 months later, when I would run into that presidential appointee and ask how was so-and-so doing, I would hear, "Well, you know, he is working out just fine."

But, yes, when there is a change in administration—and it is understandable to me—there is great doubt, great uncertainty, about whether those people who were in key positions, recommending policy and applying the law, will they be able to help me in terms of carrying out the goals of the new administration. I think the answer is for anyone who has been actively involved in the campaign for the opponent, the person who lost, I think their opportunities will be severely, severely curtailed. But more importantly, Senator roth, I believe that the entire civil service then comes into deeper question in the minds of the new administration.

Senator ROTH. And I think that was once a problem. I can remember years ago, there was a staunch feeling among Republicans that the civil service were Democrats, or liberals, whatever you wanted to call it. But I think we have overcome that, and I agree with you, that's what concerns me.

It goes back, I think, Mr. Burckman, to the point you made about the ambitious. To get ahead, it's going to be clear, particularly as you rise to the higher positions in the bureaucracy, that if you want to move further, there is nothing to prohibit you from being politically active. So you are really putting the civil servant in a very difficult position.

So if we are going to pass legislation, shouldn't we at least exempt that band of high civil servants who pretty much report to the politicians, so that they are not put in that difficult, embarrassing position?

I'd be interested in each of your reactions to that.

Mr. ROSEN. I'd be glad to say I would not only exempt them, sir; I would think that it would be useful to exempt the managers and supervisors as well, because all of these people are crucial in terms of the impartial administration of the laws.

Senator ROTH. Do you gentlemen agree with that?

Mr. MORSE. Yes, Senator. For many years, as I suggested in my statement, of holding supervisory positions in agencies, I reported directly to political appointees, and I thrived, not financially but professionally, in an environment which I credit to the Hatch Act in its protection against any overreaching. And as I suggested, in 30 years, I have never been subjected to any kind of influence or pressure. Maybe it was there, and I didn't see it, but I doubt that.

Senator ROTH. There was some talk about adoption of the postal language, and I think the general reaction was that that was a step forward. But let me point out, that only takes care of the Congress. So that even if you prohibit members of Congress from making such contracts, shouldn't there at least be as much concern about pressure from the White House—and I don't care whether it is a Republican or Democrat President—and from the political appointees in the various departments? Don't you have the same problem there?

Mr. ROSEN. I would think that we would, Senator Roth. I'd like to also suggest—and I think this refers to OPM Director King's testimony when he appeared before the Committee here earlier this week—although these changes are useful in the Postal Service, because when they were introduced, partisan political considerations were really paramount in securing appointments and promotions, but that has not been the situation in the Federal civil service for many decades.

So my conclusion is, really, that making those changes would not deal with the problems that would be caused in lifting the prohibitions as contemplated by S. 185, Senator Roth.

Senator ROTH. Let me ask you, Mr. Rosen, a further question. You were a former executive director of the civil service, so you are extremely knowledgeable about the history of that civil service. Some proponents of S. 185 argue that times have changed since 1939, that the Federal Government is much more merit-based. Does the movement to a merit system mean there is no longer a need for a Hatch Act?

Mr. ROSEN. Senator Roth, absolutely note. The merit system is fragile, and it can be easily undermined. Its two greatest assets for recruiting and retaining high competence to serve the American people are, first, the open, competitive examining system, and second, the existing prohibitions on political activity. The open, competitive examining does give reasonable assurance to the American people that positions will be filled on the basis of a relative ability and knowledge. And the prohibitions on political activity builds public confidence that the civil service will be fair and impartial,

and in doing so, Senator Roth, it actually contributes significantly to the recruitment and retention of high competence.

Senator ROTH. Mr. Burckman, let me ask you a question a little along the lines of one I asked Mr. Rosen a few minutes ago. If you have a civil servant who is politically active, let's say again for Bush, who is a member of the IRS, and he does it properly, he does it off-duty, but then the daytime comes, and he is auditing some prominent Democrat account. Now, there is a lot of decisionmaking to do when you go through it, and don't you run the risk that that prominent Democrat businessman is going to feel that this Republican may not be objective in his decisionmaking? Aren't we undercutting confidence in the system?

Mr. BURCKMAN. Yes, sir, that's right. It strikes at the appearance if you will, of impartiality about the Service. And while it may sound extreme, we have always believed that the Service ought to be like Caesar's wife, if you will—it should not even give the appearance of any partiality one way or the other. And if I were that Democrat you just described, I'd be a little nervous at that audit.

Senator ROTH. And the auditor might be extremely careful, but nevertheless it is a matter of perception.

Mr. BURCKMAN. That's right.

Senator ROTH. So it undercuts confidence in the nonpartisan administration of the Federal laws.

Mr. BURCKMAN. Exactly, Senator.

Senator ROTH. I know you only served in IRS, but isn't that true in other sensitive areas—maybe I should ask you, Mr. Morse—for example, in the law enforcement area, don't you run the same risk?

Mr. MORSE. Yes, and in my original statement, I did describe an area of concern that was only meant to be illustrative. We did not mean to exclude, for example, the Internal Revenue Service. I think that's just another illustration. But certainly, law enforcement officials, uniformed or otherwise—and I mentioned attorneys, generally, and of course, independent adjudicators in particular.

Now, we as administrative law judges are insulated even more from not only political influences, but from agency managerial influence, too, so that is a special situation. But that doesn't make us any less vulnerable to the kind of perceptions indeed if we should become engaged in or susceptible to others who are engaged in political activity.

Senator ROTH. Mr. Morse, you are a prominent attorney, a judge. Let me ask you your opinion. Under S. 185, the affirmative language says that, "an employee may take an active part in political management or in political campaigns." Does that language in your judgment preclude future Presidents from issuing Executive orders like those of Theodore Roosevelt or Thomas Jefferson, barring active partisan participation in campaigns?

Mr. MORSE. Yes, Senator Roth. I think the answer is that if enacted, it is a legislative command which would tie the hands of a President. And I have suggested a couple of times this morning that one of the concerns is the lack of definition of political activity, and that that is true also of the environment under the existing law.

But the thrust of the law is different. Today, the thrust is a prohibition, and in the proposal, the thrust of S. 185 would be an opening of the door, so that while there would be room for administrative interpretation, there isn't any room to get out of the parameters of the Act. So the kind of prohibition that we have historically seen moving forward that has been described today would in fact be inconsistent with the mandate of section 7323 as you have quoted it.

Senator ROTH. S. 185 attempts to make a distinction between the Federal employee on the job and being politically active off the job. Do you, Mr. Morse, think that you can draw that kind of line? Is that realistic?

Mr. MORSE. I think you can draw it up to a point, and certainly, the mechanical aspect of it is clear. I suggested that it is very hard to tell in gross terms, if you are looking at a work force profile, who is on the job and who is not, because people are coming and going. There is much more of that today than there used to be. But so far as whether or not it would be workable, I think if you are dealing with the fact of activity, yes; if you are dealing with the subtle influences and the opportunity for continuing a dialogue, for example, between personnel, there is some opportunity for fudging.

I do think, though, that the mechanical line is there. The impressionistic one is the thing that we are dealing with.

I don't want to get into a discussion, I think, sir, as to the capability of enforcing it in terms of whether or not you have people who are going to intentionally violate it, except to note that successful people in the business world, as in Government, are innovative, and I don't think we can today predict just what the parameters will be in the future unless either the legislation spells it out, or there is a very clear mandate, in the legislative history, for example, which tells us just what is proscribed and what is permitted. Otherwise, over time, we are going to get as many or more variations than any of us can think of today.

Senator ROTH. You mentioned that you are an administrative law judge. Would this legislation, if adopted, mean an administrative judge could be politically active?

Mr. MORSE. If there is no exclusion, then I think an administrative law judge or any other adjudicator in the executive branch would be as free as any other employee to participate in the very activity that is contemplated in the term "political management" or in political campaigns. My concern, as I am sitting with the Committee today, is whether it would be feasible, whether it would be lawful, for an administrator to attempt to narrow those parameters, and I think not. I think the command of Congress would say no.

So unless the legislation excludes by definition certain categories of Federal personnel——

Senator ROTH. Even though the administrative judge, as the name implies, he or she is a judge and should be totally impartial.

Mr. MORSE. Yes; we serve under Title V provisions of the Administrative Procedures Act, and that excuses us from many managerial oversights and intrusions, but it would not free us, I think, from the provisions of this Act.

So I think the Committee would have to recommend, or on the floor there would have to be an amendment.

Senator ROTH. I strongly agree with that.

Gentlemen, time is moving on, and I may have some further questions in writing, but let me express my personal appreciation to each and every one of you for your very helpful testimony.

Chairman GLENN. Let me just make a statement before we go to our last panel, David Denholm, president of the Public Service Research Council.

We have on-the-job/off-the-job differentiations right now; we have that. And that is part of the problem in that the administration of those things has been so crazy through the years, even though they have been cleaned up a little bit in recent years. What S. 185 does is try to make these lines more clear.

Mr. Rosen mentioned the Social Security claims adjuster. Well, that claims adjuster can show up on the job with a political button if he wants to. He can show his preference if he wants to to the people he is dealing with right now. In our law, we prohibit that; S. 185 would say you cannot do that. You can't influence the public that way by wearing a button. The current Hatch Act doesn't say what size button; you could have one that covered your whole chest, or you could even put a bumper sticker across yourself if you wanted to, I guess, so that nobody could miss it. We wouldn't permit that under our bill. So we are tightening up in that regard.

So we have on-job/off-job differentiations right now——

Mr. ROSEN. If the Chairman will indulge me.

Chairman GLENN [continuing]. Just a moment—civil servants can be politically active now, but the problem is in very inconsistent ways, and that's what we try to straighten out here. We have brought up repeatedly here buttons and bumper stickers and contributions, but not in-kind—you can put a placard in your yard, on your car, but you can't waive it on a stick. It is just a hodge-podge of things that need to be cleaned up.

And further, I wanted to point out very, very specifically something that has been so misrepresented, and in many of the editorials that I have seen, and that is, they call it "repeal" of the Hatch Act. It is not "repeal" of the Hatch Act; it is reform of the Hatch Act in ways that are supposed to make it more fair for everybody, and with very stiff penalties for violations which are not there right now.

Just one more thing before we move on. I wanted to make sure that we understood—the merit system came up, and let me just read this: "When the Hatch Act was passed in 1939, the development of a professional civil service was being undermined by patronage appointments"—in a Democratic administration, I might add, too, Senator Roth. "More than 60 new Federal agencies had been created by the end of 1934, but only five had been placed under jurisdiction of the Civil Service Commission. This meant the majority of these agencies"—60 of them, brand new ones—"were being staffed on the basis of political patronage rather than merit competition." And that was wrong.

"This rapid growth of patronage jobs of somewhere around 300,000"—they estimated about 300,000 jobs—"caused congressional concern that some civil servants might be working for partisan rather than national interests." And I don't doubt the least bit that that was the case.

"The issues raised in the 1939 congressional debate offer a good perspective on the motivation for the original Act. I quote from the floor debate of Mr. McLean of New Jersey on July 20th, 1939. He said, and I quote: 'It was established many years ago that the merit system should control in the appointment of persons to public office and that the political idea that to the victor belongs the spoils should no longer be the measure by which appointment is made. If that principle had been adhered to, there would be no reason and hence no demand for this legislation. But the New Deal, under the pretense of emergency, saw fit to disregard the merit system and to provide in all legislation adopted that in making appointments to public office, the provisions of civil service laws should not apply. But for this, there would be no occasion for the enactment of this legislation.'"

That is the end of his quote.

When passing the Hatch Act, Congress was attempting to protect the civil service from undue political influence by prohibiting Federal workers from engaging in partisan political activities altogether. Fifty-four years later, we have a dramatically different situation. We have an established professional civil service, hired on a competitive, merit basis. We also have many different laws on the books to protect Federal employees from coercion.

So the situation has changed. To the people who say that it is just the same as it was back in 1939, that is just not the case. So this is not to repeal the Hatch Act; it is to reform it in ways that make it more fair for everybody and so people will understand exactly what the laws are that they are operating under.

Mr. ROSEN. Mr. Chairman, may I make a comment, sir?

Chairman GLENN. Yes, if you can be brief, please, because we have to move on.

Mr. ROSEN. I will, sir. I would just mention, Mr. Chairman, that the issue here comes down to whether we are also repealing what existed prior to the Hatch Act and applied to all civil service employees in the competitive service.

The prohibitions that were placed in effect by President Teddy Roosevelt in 1907 by Executive order, in effect, many of these prohibitions would be eliminated by S. 185, so——

Chairman GLENN. Which ones? That's a pretty sweeping charge.

Mr. ROSEN. Well, the Executive order that President Roosevelt issued applied the basic Hatch Act prohibitions to the competitive service, and what the Hatch Act did, as you indicated in your statement, was extended that and wrote into law what was in the Executive order and extended it to all these new agencies that President Franklin Roosevelt had established. So S. 185 really goes significantly beyond just the change that took place in 1939, sir, with all due respect.

Chairman GLENN. Well, with all due respect, I just disagree. But we're going to have to move on.

Senator ROTH. Mr. Chairman, I would like to make a comment. I don't want to get into argument about whether it reforms or repeals, but it certainly guts the Hatch Act. Just let me point out that last year in the majority report, it said that section 9(a) is widely regarded as the heart of the Act. And section 9(a) is the section that says an employee in the executive agency may not—not—take an active part in political management or in political campaigns.

Now, what S. 185 provides is that an employee may take an active part—may take an active part—in political amendment or in political campaigns. So as is said in the majority report, you are striking at the very heart of the Act.

Now, you can say it is not totally negating it, but it is taking out the most important part, and no one should make any mistake about that.

Chairman GLENN. Well, we won't make any mistake about it, because on the job, we are tightening up on exactly what Senator Roth just said. There will be less political activity on the job where the coercion really can occur; we tighten up on that, so that prohibition is tighter with this Act than it was before. So it is the heart.

Senator ROTH. We'll buy that part of the bill, Mr. Chairman.

Chairman GLENN. Pardon?

Senator ROTH. We'll buy that part of the bill.

Chairman GLENN. Well, OK, then, you buy the whole bill. I'm glad to hear your endorsement for this this morning.

Senator ROTH. Not quite, not quite.

Chairman GLENN. Thank you, gentlemen.

Senator ROTH. Thank you very much.

Chairman GLENN. Our last witness this morning is David Denholm, president of the Public Service Research Council.

David, we are very sorry we've kept you waiting so long this morning, but you've been listening, so you know the gist of where we are going this morning. We look forward to your testimony.

TESTIMONY OF DAVID DENHOLM,[1] PRESIDENT, PUBLIC SERVICE RESEARCH COUNCIL

Mr. DENHOLM. I'm going to take it easy on you because so much of what I wanted to say has been covered so well, so much better than I could, by other witnesses, and what I had prepared was a relatively long statement, and there are a few things that I think deserve special emphasis.

Mr. Chairman, members of the Committee, my name is David Denholm. I am the president of the Public Service Research Council, which is a national citizens' lobby concerned with the influence of unions on public policy. I appreciate the opportunity to testify here today against S. 185, a bill which we think would destroy the Hatch Act's protections against a politicized bureaucracy and subject Federal and postal workers to political exploitation.

I will eliminate the brief history of the law and move to a concern about passage of the Civil Service Reform Act in 1978, at which time Senator Ribicoff chaired this Committee and expressed

[1] The prepared statement of Mr. Denholm appears on page 105.

grave concerns about conflicts between civil service reform and revising the Hatch Act.

At that time, the Comptroller General of the United States gave Senator Ribicoff a report detailing problems that they saw in conflicts between civil service reform and the possibility of liberalizing the Hatch Act. Two items from that report I think deserve your particular attention.

One, they say "Any safeguard established to protect Federal employees from coercion by management should also include some form of protection from outside groups. These groups may be even more capable of systematic coercion than management."

Second, the Comptroller General's report said, "The elimination of restrictions on political activity would very likely increase the potential for conflict of interest situations to develop. Problems of this type are not necessarily limited to the higher-grade positions having substantial input into a decision. Any position that has the responsibility for large Federal expenditures, even in small increments, may be susceptible to misuse of their authority."

There is no doubt in my mind that the "outside groups" referred to by the Comptroller General included labor organizations in Federal and postal service. I take as further evidence of that comments in a piece called "The Hatch Act: The Civil Libertarian's Defense," by John Bolton, in which he says, "Indeed, the difference between coercion of an employee by a supervisor—the paradigm of 1939—and coercion of an employee by a union, which may include supervisors—the paradigm of today—is that coercion by a union is far harder to resist. Moreover, it may well be that the unions are far more capable of engaging in the systematic solicitation and intimidation of Federal employees than a network of supervisors. Public employee unions were not of significant size when the Hatch Act was originally passed, but their advent has, if anything, only made the Hatch Act more important. Union protestations that their presence renders supervisor coercion less likely, however accurate, still provides no answer to the question of what renders union coercion less likely."

I would say all of the pressure for revising the Hatch Act is coming from Federal and postal unions, certainly the political clout behind that pressure, and I think you need to look very carefully at whether these unions represent the interests of Federal workers, postal workers, or even their own members.

Please remember that under the Civil Service Reform Act, even though a union may "represent" lots of Federal employees, they have relatively few members. I know of one Federal union that claims to represent more than 600,000 Federal workers and yet has less than 200,000 members who are active Federal employees.

There is some question about how these unions find out how their members feel. The General Accounting Office, going back to that report I just referred to, said that when the American Postal Workers Union surveyed its members, or reported that a survey of its members showed that they were overwhelmingly in support of legislation, that the survey was conducted by union officials at union meetings, selected on a random basis. I don't think that that is something that you can say is a good way to survey your members.

I would also point out that back in the 93rd Congress, the representative of the National Federation of Federal Employees testified against the bill, saying that a survey of his members had shown overwhelming opposition to the bill. In the very next Congress, the representative of the same union, a different person, testified in favor the bill, saying that a survey of their members had shown overwhelming support for the bill.

So did the opinion of that many people change so markedly in one year? I think not. I think that the union officials on one side or the other were representing their own interests and not the interests of the employees.

There is some evidence, some more scientific evidence, of the opinion of Federal workers. The Merit Systems Protection Board did a survey in 1989 of Federal employees, a very broad survey, and I have included some remarks about that survey in another item which I am attaching to my testimony by reference, and I would like to focus on it.

In 1988, the Merit Systems Protection Board did a survey of Federal personnel specialists on the merit system in general, and in that survey there was a question about the impact of revising the Hatch Act on the merit system. Unfortunately, when the report of the survey to Congress was published, the result of that question was not published in the report. We found out about it only because the question itself was published in the sample of the survey that was produced in the back of the report. We obtained from the Merit Systems Protection Board all of the information about the response to that question, and I think it is very important to you.

The question was: "In your opinion, would modification of the Hatch Act to permit Federal employees great opportunities for political activity affect the operation of the merit system in general?"

The responses were limited to this: It would have a positive effect on the work environment; it would have no effect on the work environment; it would have a negative effect on the work environment; or I don't know.

Eleven percent of Federal personnel specialists said that it would have a positive effect on the work environment; 35.5 percent said that it would have a negative effect on the work environment. But I think there is more information underlying that that is important to you. When you look at the demographics of that response, of the Federal personnel specialists who were surveyed who had served more than 20 years, 44 percent saw a negative effect compared to 7.8 percent who saw a positive effect. Of Federal personnel specialists who were in the SES grades, 70 percent said that it would have a negative effect, compared to 3.5 percent who said that it would have a positive effect.

I think it is obvious from the results of the survey that to the extent that people believed this would have an effect—obviously, there was that middle ground in the whole group that didn't see any effect one way or the other—but to the extent that they have an opinion on it, the opinion is overwhelmingly that this legislation that you have proposed would have a negative effect on the merit system.

There were other questions in the demographics, such as whether the people were male or female, or whether they lived in or out

of the Washington area. I would note—and it might be more of interest to Senators from out and around—that within the Washington area, the opinion that it would have a negative effect was far stronger than outside the Washington area. So a Senator from Nebraska might say, "Well, gee whiz, I don't see this as a problem, and my people don't see this as a problem," without realizing that here at the heart of Federal employment, the experts on it, those who are responsible at the higher levels of Government, may see it as a much bigger problem.

Another element in that survey which I think really deserves your attention—and these answers were published in the report to Congress—dealt with the present amount of political abuse, and I think this is a question that Senator Glenn had some concern about. The people were asked whether they had, within the last 12 months, personally observed in their organization any of the following, and when it came to an employee being pressured to contribute to a political campaign, 99.3 percent said no; when it came to an employee being pressured to participate in partisan political activity, 99.6 percent said no; an employee actively seeking partisan political office or raising funds on behalf of a partisan political candidate, 98.1 percent said no; a career employee being pressured to resign, transfer, or accept assignment because of his or her political affiliation, 98.1 percent said no; an appointment to the competitive service made as a result of political party affiliation, 92.8 percent said no.

I think that's ample evidence that the Hatch Act as it is is doing a marvelous job of protecting the Federal civil service from being politicized. Certainly, there may be other ways to do that, but I think the present law as it is is shown in this to be serving this country very well.

Let me get to the question of the opinion of Federal employees. The Merit Systems Protection Board did a survey in 1989. They surveyed 21,454 employees, received 15,939 replies—a very good response for such a survey. The question that was asked was, "Do you agree or disagree with the following statement: I would like to be able legally to be more active in partisan political activities?" And 12.9 percent, almost 13 percent, strongly agreed; almost 19 percent agreed; the rest neither disagreed nor agreed nor disagreed nor strongly disagreed.

Again, please look at the demographics of the response—and by the way, these demographics were never published, because I obtained them from the Merit Systems Protection Board in their computer data. The shift toward disagreement with the statement increases with grade seniority. In fact, for example, when you get up to Executive Service 1, 25 percent disagree and 26 percent strongly disagree, compared to 8.4 percent who strongly agree and 14.7 percent who agree.

When you look at the age of the respondents, the shift toward disagreement increases with age, the point being that the longer a person is a Federal employee, the more senior they become, the more experienced they become with the system, the more they realize the value of the Hatch Act and do not feel that it is an unreasonable restriction on them.

I again go back to the wording of that question, which was, "I would like to be able legally to be more active in partisan political activities." There was a survey conducted by the Commission on Political Activity and Government Personnel in 1968 which rather closely mirrors that, but the wording of the question was different. The wording was, "Have you ever wanted to take part in particular kinds of political activity, but didn't because you were a Federal employee?" Seventy-one percent responded in the negative. I would suggest to you that the 71 percent who responded in the negative there is almost exactly the same percent of people who didn't either agree or strongly disagree with the prior statement. And therefore, there is a consistent level of Federal employee opinion over a long period of time.

It must be noted, of course, that in 1968, postal workers were Federal employees, and by 1989, they were not, and therefore were in one survey but were not covered in the other.

In 1988, the *National Journal* reported that a survey of Government executives were asked the following question: "Should the Hatch Act be amended to permit Federal workers to run for office and manage and raise money for campaigns on their own time?" And of 3,607 replies, 3,255 of which were from Federal Government employees, 60 percent answered no to the question—I think good evidence of the opinion of Federal employees.

Mr. Chairman, it has been a long hearing. I again appreciate the opportunity to finally get some of this information on the record and our views. I would like to close off—there is so much I'd like to say to you—I would like to close off with a suggestion that comes from my last comment.

The Hatch Act is a civil service protection law. It protects the civil service, and it protects the civil servant, and it protects the American people. When it was enacted, postal workers were Federal civil servants. They are not now. My sense of it is, purely politically, that the pressure you are getting to change this, the real political clout behind trying to change this, is coming from the postal unions.

If you want to just change the law, why not recognize what happened in 1971 and say the postal workers aren't Federal employees, and be done with it—and not screw up one of the best laws you've got?

Thank you for your time. Of course, I will respond to questions.

Chairman GLENN. Thank you very much.

I would respond by saying this isn't just to benefit postal workers. This is because there were inequities, we felt, in some of these 3,000 differences that grew up through the years, most of which have been corrected, but not all of them, and we have discussed some of those here earlier this morning. But I would repeat again this is not repeal of the Hatch Act. It is reform. It is trying to correct some of those inequities.

Mr. Denholm, let me make sure we understand some of your figures here—and we are late this morning, so we're going to have to move along, but I want to address a few inaccuracies as I see them in your statement.

In your testimony, I believe you had a statement in there that the Senior Executive Association does not oppose—I say the Senior

Executive Association does not oppose S. 185. It has not taken a position for or against the bill, and the same thing goes for the American Bar Association. So your statement is wrong.

Mr. DENHOLM. I apologize if that is inaccurate. This was put together at the last minute from a great many sources. I would be happy to correct any inaccuracies. There are others that I have become aware of since it was submitted. I think they are minor, but I will correct them in writing.

Chairman GLENN. OK. I entered a letter in the record earlier this morning from the SEA, correcting some of the misinterpretations——

Mr. DENHOLM. They did oppose the legislation before, and I think where we came from was a survey of their members saying that their members were opposed to it.

Chairman GLENN. Let me just say that I have never argued either that most Federal employees want to be more politically active; I think a lot of them welcome this kind of protection—but what about those who want to be and cannot? Should we be denying them the right——

Mr. DENHOLM. Yes, definitely, sir.

Chairman GLENN [continuing]. To do things that are just common sense things? Would you prohibit the contribution of $1,000 to a Federal campaign?

Mr. DENHOLM. I think you have a very interesting problem with this question of money and the solicitation of money and contributions and the solicitation of contributions.

Chairman GLENN. Now, we prohibit that.

Mr. DENHOLM. The Federal Election Campaign Act doesn't make the money distinction that you are making in this law. You say this prohibits the solicitation of money. You know as a politician, sir, that there is much in politics that is not money, that is of great value.

Chairman GLENN. Sure.

Mr. DENHOLM. So what you are saying is that we can solicit this of great value, but we are going to prohibit the solicitation of money?

Chairman GLENN. No; I'm asking you. I am pointing out the very discrepancy that you describe—a person can contribute $1,000 to a Federal candidate, but you are denying them the right to go out and say, "I can't contribute. I have had some medical bills and so on, and I can't hack that anymore—but I want to express my right to support a candidate just as much as the person who can write a check for $1,000. And I want to go down and"—I guess we overdid the stuffed envelope thing here this morning, but anyway—stuff envelopes or tack signs onto posts. What's wrong with that?

Mr. DENHOLM. Well, you are trivializing this. Stuffing envelopes and wearing buttons and putting on bumper stickers is trivializing the issue when you are talking about the politicization of the bureaucracy.

Chairman GLENN. It's not trivial in a campaign, Mr. Denholm. It is very important.

Mr. DENHOLM. It is certainly trivial compared to the really important tasks that are done in campaigns——

Chairman GLENN. I repeat my question, then. If you are going to make a level playing field, then, so everybody is treated equally, would you say that they cannot make a contribution to a campaign?

Mr. DENHOLM. If you were going to make the level playing field, and you had to go in one direction or the other, I think you would be compelled by conscience to go against contributions.

Chairman GLENN. Well, your conscience and mine go in a little different direction on that one.

Let me say this. I just want to make very clear that I have never argued that most Federal employees want to be more politically active, but those who want to should certainly have that right.

Let me just point out another inaccuracy in your statement here this morning. There is no study by the Merit Systems Protection Board that finds that 75 percent of Federal personnel specialists think that liberalizing the Hatch Act would have a negative effect on the merit system. In fact, I ask that a letter from the MSPB, clarifying the results of their survey, be inserted into the record, and I will quote in part from that letter.

They say they are glad to reply to our request for information on this, and so on—and we'd be glad to give you a copy of this—and they list the same things that you list as the four ways the questions were asked, but they certainly come up with some different totals than you came up with. As to the positive effect on the work environment, 12 percent; no effect on the work environment, 32 percent; a negative effect on the work environment, 36 percent; don't know/no basis to judge, 21 percent.

Now, you interpret that to mean that about 75 percent, I guess, say it would have a negative effect on the system.

Mr. DENHOLM. My statement, Senator, and I will read it, is that 75 percent of those who think it will have an effect think that that effect will be negative. If you take those who think it will have a negative effect and those who think it will have a positive effect, 75 percent of those are negative.

Chairman GLENN. Well, you're wrong. Let me tell you what they interpret their own survey to mean. You may put your own spin on it, Mr. Denholm, but here is what they say about it. "In interpreting these results, one should note that the 21 percent responding 'Don't know/No basis to judge' do not necessary equate to 'Have no opinion.' Therefore, they may not be considered as neutral. The responses of this one-fifth of the sample must be read at face value—they don't know what the effect would be, or they have no basis on which to offer an opinion."

"As shown, therefore, under one-third of the respondents believe that Hatch Act reform of the kind described by the survey question would have no effect, either negative or positive, on the work environment, and slightly better than one in 10 believe that such change would have a positive effect. Similarly, slightly over one-third of the respondents believe that such change would have a negative effect on the work environment."

"As these results demonstrate, the Federal personnel community is widely divided on the issue of the Hatch Act." That is their interpretation. Now, you have put a different spin on their figures, but they say only about one-third think it is going to have a bad effect.

I would ask unanimous consent that this be entered in the record.[1]

Chairman GLENN. I yield. I don't have any more questions.

Senator ROTH. I have just one comment and question, Mr. Chairman.

As was indicated by your figures, 70 percent were not interested in being involved politically or changing the Hatch Act; 30 percent wanted to become active. So if you limited the question to that, then of course, why shouldn't the 30 percent have the opportunity? But that's only part of the picture. We are also talking about assurance that the laws are enforced and administered in a nonpartisan way. So it is not just a question of 30 percent wanting to be politically active; there are these other factors to be weighed. Wouldn't you agree with that?

Mr. DENHOLM. I certainly agree. I think even if 100 percent wanted to be politically active that the Hatch Act would still be a good law, and it would be a necessary law. In fact, perhaps it might be more necessary if 100 percent wanted to be politically active than only the 30.

Senator ROTH. I want to thank you for your very comprehensive statement and for your patience today. We appreciate it.

Mr. DENHOLM. Thank you.

Chairman GLENN. I ask unanimous consent that the record be kept open. Senator Pryor had some additional questions he wanted to submit, and we'd appreciate an early reply to those questions so we can include them as part of the record.

Thank you. The Committee stands in recess subject to call of the Chair.

[Whereupon, at 12:32 p.m., the Committee was adjourned.]

[1] The MSPB letter appears on page 117.

APPENDIX

103D CONGRESS
1ST SESSION

S. 185

II

To amend title 5, United States Code, to restore to Federal civilian employees their right to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 26 (legislative day, JANUARY 5), 1993

Mr. GLENN (for himself, Mr. PRYOR, Mr. STEVENS, Mr. LIEBERMAN, Mr. LEVIN, Mr. AKAKA, Mr. SARBANES, Mr. CONRAD, Mr. SASSER, Mr. LEAHY, and Mr. DORGAN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend title 5, United States Code, to restore to Federal civilian employees their right to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Hatch Act Reform Amendments of 1993".

SEC. 2. POLITICAL ACTIVITIES.

(a) Subchapter III of chapter 73 of title 5, United States Code, is amended to read as follows:

"SUBCHAPTER III—POLITICAL ACTIVITIES

"§ 7321. Political participation

"It is the policy of the Congress that employees should be encouraged to exercise fully, freely, and without fear of penalty or reprisal, and to the extent not expressly prohibited by law, their right to participate or to refrain from participating in the political processes of the Nation.

"§ 7322. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means any individual, other than the President and the Vice President, employed or holding office in—

"(A) an Executive agency other than the General Accounting Office; or

"(B) a position within the competitive service which is not in an Executive agency;

but does not include a member of the uniformed services;

"(2) 'partisan political office' means any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but shall exclude any office or position within a political party or affiliated organization; and

"(3) 'political contribution'—

"(A) means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose;

"(B) includes any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;

"(C) includes any payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

"(D) includes the provision of personal services for any political purpose.

"§ 7323. Political activity authorized; prohibitions

"(a) Subject to the provisions of subsection (b), an employee may take an active part in political management or in political campaigns, except an employee may not—

"(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election;

"(2) knowingly solicit, accept, or receive a political contribution from any person, unless such person is—

"(A) a member of the same Federal labor organization as defined under section 7103(4) of this title or a Federal employee organization which as of the date of enactment of the Hatch Act Reform Amendments of 1993 had a multicandidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4)));

"(B) not a subordinate employee; and

"(C) the solicitation is for a contribution to the multicandidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4))) of such Federal labor organization as defined under section 7103(4) of this title or a Federal employee organization which as of the date of the enactment of the Hatch Act Reform Amendments of 1993 had a multicandidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4)));

or

"(3) run for the nomination or as a candidate for election to a partisan political office; or

"(4) knowingly solicit or discourage the participation in any political activity of any person who—

"(A) has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before the employing office of such employee; or

"(B) is the subject of or a participant in an ongoing audit, investigation, or enforcement action being carried out by the employing office of such employee.

"(b)(1) An employee of the Federal Election Commission (except one appointed by the President, by and with the advice and consent of the Senate), may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a political contribution.

"(2) No employee of the Federal Election Commission (except one appointed by the President, by and with the advice and consent of the Senate), may take an active part in political management or political campaigns.

"(3) For purposes of this subsection, the term 'active part in political management or in a political campaign' means those acts of political management or political cam-

paigning which were prohibited for employees of the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

"§ 7324. Political activities on duty; prohibition

"(a) An employee may not engage in political activity—

"(1) while the employee is on duty;

"(2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof;

"(3) while wearing a uniform or official insignia identifying the office or position of the employee; or

"(4) using any vehicle owned or leased by the Government of the United States or any agency or instrumentality thereof.

"(b)(1) An employee described in paragraph (2) of this subsection may engage in political activity otherwise prohibited by subsection (a) if the costs associated with that political activity are not paid for by money derived from the Treasury of the United States.

"(2) Paragraph (1) applies to an employee—

"(A) the duties and responsibilities of whose position continue outside normal duty hours and while away from the normal duty post; and

"(B) who is—

"(i) an employee paid from an appropriation for the Executive Office of the President; or

"(ii) an employee appointed by the President, by and with the advice and consent of the Senate, whose position is located within the United States, who determines policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws.

"§ 7325. Political activity permitted; employees residing in certain municipalities

"The Office of Personnel Management may prescribe regulations permitting employees, without regard to the prohibitions in paragraphs (2) and (3) of section 7323 of this title, to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Office considers it to be in their domestic interest, when—

"(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicin-

ity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

"(2) the Office determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.

"§ 7326. Penalties

"Any employee who has been determined by the Merit Systems Protection Board to have violated on two occasions any provision of section 7323 or 7324 of this title, shall upon such second determination by the Merit System Protection Board be removed from such employee's position, in which event that employee may not thereafter hold any position (other than an elected position) as an employee (as defined in section 7322(1) of this title). Such removal shall not be effective until all available appeals are final.".

(b)(1) Section 3302(2) of title 5, United States Code, is amended by striking out "7203, 7321, and 7322" and inserting in lieu thereof "and 7203".

(2) The table of sections for subchapter III of chapter 73 of title 5, United States Code, is amended to read as follows:

"SUBCHAPTER III—POLITICAL ACTIVITIES

SEC. 3. AMENDMENT TO CHAPTER 12 OF TITLE 5, UNITED STATES CODE.

Section 1216(c) of title 5, United States Code, is amended to read as follows:

"(c) If the Special Counsel receives an allegation concerning any matter under paragraph (1), (3), (4), or (5) of subsection (a), the Special Counsel may investigate and seek corrective action under section 1214 and disciplinary action under section 1215 in the same way as if a prohibited personnel practice were involved.".

SEC. 4. AMENDMENTS TO TITLE 18.

(a) Section 602 of title 18, United States Code, relating to solicitation of political contributions, is amended—

(1) by inserting "(a)" before "It";

(2) in paragraph (4) by striking out all that follows "Treasury of the United States" and inserting in lieu thereof a semicolon and "to knowingly solicit any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be

fined under this title or imprisoned not more than 3 years, or both."; and

(3) by adding at the end thereof the following new subsection:

"(b) The prohibition in subsection (a) shall not apply to any activity of an employee (as defined in section 7322(1) of title 5) or any individual employed in or under the United States Postal Service or the Postal Rate Commission, unless that activity is prohibited by section 7323 or 7324 of such title.".

(b) Section 603 of title 18, United States Code, relating to making political contributions, is amended by adding at the end thereof the following new subsection:

"(c) The prohibition in subsection (a) shall not apply to any activity of an employee (as defined in section 7322(1) of title 5) or any individual employed in or under the United States Postal Service or the Postal Rate Commission, unless that activity is prohibited by section 7323 or 7324 of such title.".

(c)(1) Chapter 29 of title 18, United States Code, relating to elections and political activities is amended by adding at the end thereof the following new section:

"§ 610. Coercion of political activity

"It shall be unlawful for any person to intimidate, threaten, command, or coerce, or attempt to intimidate,

threaten, command, or coerce, any employee of the Federal Government as defined in section 7322(1) of title 5, United States Code, to engage in, or not to engage in, any political activity, including, but not limited to, voting or refusing to vote for any candidate or measure in any election, making or refusing to make any political contribution, or working or refusing to work on behalf of any candidate. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.".

(2) The table of sections for chapter 29 of title 18, United States Code, is amended by adding at the end thereof the following:

"610. Coercion of political activity.".

SEC. 5. AMENDMENTS TO THE VOTING RIGHTS ACT OF 1965.

Section 6 of the Voting Rights Act of 1965 (42 U.S.C. 1973d) is amended by striking out "the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity" and by inserting in lieu thereof "the provisions of subchapter III of chapter 73 of title 5, United States Code, relating to political activities".

SEC. 6. AMENDMENTS RELATING TO APPLICATION OF CHAPTER 15 OF TITLE 5, UNITED STATES CODE.

(a) Section 1501(1) of title 5, United States Code, is amended by inserting ", the District of Columbia," after "State".

(b) Section 675(e) of the Community Services Block Grant Act (42 U.S.C. 9904(e)) is repealed.

SEC. 7. APPLICABILITY TO POSTAL EMPLOYEES.

The amendments made by this Act, and any regulations thereunder, shall apply with respect to employees of the United States Postal Service and the Postal Rate Commission, pursuant to sections 410(b) and 3604(e) of title 39, United States Code.

SEC. 8. EFFECTIVE DATE.

(a) The amendments made by this Act shall take effect 120 days after the date of the enactment of this Act, except that the authority to prescribe regulations granted under section 7325 of title 5, United States Code (as added by section 2 of this Act), shall take effect on the date of the enactment of this Act.

(b) Any repeal or amendment made by this Act of any provision of law shall not release or extinguish any penalty, forfeiture, or liability incurred under that provision, and that provision shall be treated as remaining in force for the purpose of sustaining any proper proceed-

ing or action for the enforcement of that penalty, forfeiture, or liability.

(c) No provision of this Act shall affect any proceedings with respect to which the charges were filed on or before the effective date of the amendments made by this Act. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted.

O

PREPARED STATEMENT OF SENATOR LIEBERMAN

Mr. Chairman, I commend you for holding an early hearing on this important subject of reform of the Hatch Act. I am pleased to be an original cosponsor of S. 185, this year's bill finally to rationalize the Hatch Act and to restore political freedoms to our nation's Federal employees. And I am extremely pleased that the Administration has seen fit to endorse this bill. That is a breath of fresh air and a sign of change.

Mr. Chairman, I have made clear in the past, including in additional views I filed last year in the Committee's report, that I believe the Hatch Act as it currently stands in law to be unconstitutional. Its categorical ban on political activity and participation by Federal employees is not at all narrowly tailored to prevent the harms the Hatch Act sought to address. It is a sledgehammer approach to an area in which I believe the First Amendment requires a scalpel. The bill you have proposed, Mr. Chairman, draws a much more acceptable balance.

There are two areas, Mr. Chairman, in which I wish this bill went further. When the House of Representatives considered this legislation, it adopted an amendment proposed by my friend Congresswoman Nancy Johnson. That amendment would permit Federal employees to run for local elective office, such as school boards and town councils, even if these contests are technically partisan races. I agree with Congresswoman Johnson that it is important to allow our Federal employees to be fully participatory members of their local communities.

Mr. Chairman, I continue to remain concerned about the provisions of Chapter 15 of Title 5 that restrict the rights of state or local employees whose positions are at least partly funded with Federal funds. One of these provisions prohibits a covered state or local employee from running for elective office, except in elections in which no candidate stands as the candidate of a political party. The effect of this in Connecticut is to bar these employees from running for any local office, even where otherwise permitted by state law.

Unfortunately for the State of Connecticut, it has pursued the enlightened approach of permitting state employees to run for elective office, even in partisan elections. Since this activity is permitted under state law, the state cannot remove an employee who seeks such office, even if that employee's position is partially financed with Federal funds. Every year this means that the State, pursuant to Chapter 15, must forfeit twice the annual salary of the person who ran for office.

This result is unfair to Connecticut. It is an unwarranted intrusion on Connecticut's management of its own affairs. And there is no basis for such a limitation. Other provisions of Chapter 15 clearly prohibit the covered state or local employee from using his or her official authority or influence to interfere with an election or nomination, and from directly or indirectly coercing or attempting to coerce other state or local employees into making any kind of contribution, monetary or in-kind, to a political party, organization or candidate.

Mr. Chairman, even though this bill does not go as far as I would like, it has my full support. Again, I commend you for holding this hearing, and I look forward to marking up this legislation at the earliest possible opportunity.

PREPARED STATEMENT OF CONGRESSWOMAN NANCY L. JOHNSON

Mr. Chairman:

As a strong advocate for responsible Hatch reform, I urge members of the Senate Government Affairs Committee to support my proposal to allow Federal employees to participate and run in local elections, as I feel it will allow our constituents the political rights they deserve, without compromising the apolitical nature of our Federal workforce.

I commend the Chairman and Ranking Members of both the House and Senate Committees for their work on Hatch reform. Unfortunately, I fear that Congress may send the President the same Hatch reform bill we passed in the 101st Congress, to allow Federal employees to run for State Party Chairman and other partisan offices but not for local school board or First Selectman.

Mr. Chairman, I would like to make two points. First, I never once had a Federal employee ask for the right to be deputy town party chairman, or even state party chairman, but I have had Federal employees implore me to let them run for the school board, the county council, or town selectman or selectwoman. Second, while intimidation is possible in state and Federal contests, it cannot be used to win local races. The vast majority of Federal employees work in cities, and live in suburbs

and small towns. Very few of the people they work with live in their towns so intimidating them to vote won't be a factor.

My proposal gives Federal employees what they want most—the right to run for local office. Every group of Federal employees who has discussed this issue with me have stated that they want to be able to run for local offices, such as school board or town council. These are people who are dedicated to public service and want to serve their small town as an elected official. Responsible Hatch reform must allow these people to serve their local communities in this manner. This reform is appropriate in an age when most Federal employees don't work in the same community where they reside, so the issue of intimidating coworkers into working or voting for them is moot.

I recently wrote the Office of Special Counsel inquiring of its experience in enforcing Hatch regulations for Federal employees residing in certain partially exempted localities where they are allowed to run in partisan elections as independent candidates. According to Ms. Kathleen Day Koch, Special Counsel, "we have not observed that exempted localities have presented a greater problem than non-exempt localities with respect to Hatch Act violations." This is very important knowledge to have as we seek to write responsible reform legislation.

The original Hatch Act's aim, a Federal civil service independent of Federal electoral politics, is as necessary and desirable today as it was 50 years ago. But we need not sacrifice the legitimate desire of Federal workers to pursue local civic and political interests that do not conflict or interfere with their duties.

Once President Clinton signs a Hatch reform bill into law, we may not visit the issue of Hatch reform again for many years. The Johnson proposal makes sense and will promote responsible Hatch reform. I ask you to join me in supporting this proposal. Thank you.

U.S. OFFICE OF SPECIAL COUNSEL
WASHINGTON, DC
April 9, 1993

Dear Congresswoman Johnson:

I am writing in response to your request of March 24 regarding the Office Of Special Counsel's (OSC) experience with exempted localities under the Hatch Act.

Under current law, Federal employees are permitted to be candidates for public elective office in any non-partisan election, i.e., an election in which no candidate represents, for example, the Republican or Democratic party. In addition, current law provides that Federal employees who reside in certain partially exempted localities may be candidates for any local partisan public office within the exempted locality, provided that they run as independent candidates. Under H.R. 20, as amended on the House floor, Federal employees would be permitted to be partisan or non-partisan candidates in any local election. The prohibition on being a candidate in partisan elections for statewide and Federal office would be maintained as under current law.

You have asked for historical information concerning OSC's enforcement efforts relating to the exempted localities. There have been exempted localities since the Hatch Act was passed in 1939. In fact, such exemptions had existed for many years prior to 1939 under regulations of the Civil Service Commission. In our experience interpreting the Hatch Act since 1979, OSC has reviewed approximately 96 matters concerning the activities of employees residing in exempted localities. Generally speaking, we have not observed that exempted localities have presented a greater problem than non-exempted localities with respect to Hatch Act violations. These 96 matters actually represent a very small percentage of OSC's total effort in enforcing the Hatch Act over the past thirteen years.

Of those cases dealing directly with local partisan elections, a typical complaint might allege that a Federal employee had violated the Act by being an *independent* candidate in a local partisan election. Such a situation would not constitute a violation of the Hatch Act. On the other hand, another complaint might allege that, although an employee purported to be an independent candidate, he or she had actually transformed the nature of the candidacy into one which was partisan, for example by affiliating with the efforts of a partisan political party. A case involving this situation is currently pending before the Merit Systems Protection Board.

In a more general vein, it may be advisable to review potential constitutional problems with candidacy limitations. The current law, with its proscription on candidacy in any partisan election, has been upheld by the Supreme Court as a justifiable restriction on the exercise of First Amendment rights. However, H.R. 20 professes the policy that "employees should be encouraged to exercise fully, freely, and without fear of penalty or reprisal, and to the extent not expressly prohibited by

law, their right to participate or to refrain from participating in the political processes of our Nation." In light of this statement, it is not clear what the policy considerations are which justify any selective limitations on that right, including a limitation on partisan candidacy which only applies to statewide and Federal elections. Absent an explanation of these policy considerations, enforcement of the provision could be subject to a challenge that it infringes on a constitutional right without sufficient justification.

I hope this information is useful in your consideration of amendments to the Hatch Act. Of course, this office will continue to enforce the Hatch Act in whatever amended form the Congress deems appropriate. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

KATHLEEN DAY KOCH

PREPARED STATEMENT OF ALFRED K. WHITEHEAD

Mr. Chairman, my name is Alfred K. Whitehead and I am the General President of the International Association of Fire Fighters. I appear before you today on behalf of our union's nearly 200,000 members to offer our strong and unequivocal support for S.185, the Hatch Act Reform Amendments of 1993.

Mr. Chairman, the job of a fire fighter is not an easy one; surveys consistently show it to be the Nation's most dangerous profession. Every time the alarm sounds, fire fighters know that they may be required to put their life on the line to protect the safety and property of our fellow citizens. Fire fighters in the Federal service play an especially vital role. Most of our Federal employee members protect either military installations or VA medical facilities. The very thought of a fire at a nuclear missile site or at a VA hospital, where many of our nation's wartime heroes can be found, is chilling.

Federal fire fighters carry out this noble and dangerous mission with distinction, and they ask for little in return. The very least we owe these heroes is the right to fully participate in the American political process. A cruel irony of the Hatch Act is that it takes away rights from those who give so much. The time is long overdue to reform the Hatch Act, and make Federal workers full-fledged American citizens.

To fully appreciate why the Hatch Act must be reformed, it is necessary to recall its original intent. The Hatch Act was adopted in 1939 in an effort to protect Federal employees from coercion. At the time, drastic measures were needed to restrict political interference in the Federal work place.

Members of Congress felt that only an outright ban on political activity could stop political appointees from compelling workers to perform political duties.

Much has changed in the last fifty years, and the same law which liberated Federal servants then, serves to confine them today. The threat of political coercion has been largely eliminated by several new laws which protect the rights of workers and deter abuse of public office. For example, the Merit Systems Protection Board and the Office of Special Counsel offer Federal workers protections that were not available in the 1930s. Moreover, the U.S. Criminal Code (18 USC) contains several new prohibitions on political coercion punishable by fine and imprisonment.

Even more importantly, the legislation pending before this Committee builds in important new safeguards to ensure that the sort of political coercion that gave rise to the Hatch Act will never reappear. That is why Federal workers who sought the protection afforded by the Hatch Act in the 1930s, today are advocating its reform.

Mr. Chairman, I find it significant that the opposition to Hatch Act reform comes not from workers concerned about harassment, but from special interest groups and some politicians who disagree with Federal employees on substantive issues. It is unconscionable that we would disenfranchise millions of Americans because of their views on policy matters, yet that is precisely what Congress would be doing if it fails to enact this proposal.

Mr. Chairman, I would be remiss if I did not take a moment to recognize your leadership on this issue. During the past decade, in the face of hostile Administrations, you championed the cause of Federal workers and sought to extend to them the basic political rights enjoyed by every other American. For this we are indebted to you.

In closing, I wish to note that the legislative history of this issue would appear to indicate that enactment is finally on the horizon. The House passed the legislation earlier this year, and an overwhelming majority of the Senate is on record in support of the proposal. The one obstacle that has prevented adoption of Hatch Act

reform in the past—opposition from the White House—is no longer a factor as President Clinton has already indicated his intent to sign the bill into law.

In light of these factors, I wish to urge this Committee to quickly report the bill to the Senate for consideration. After years of debate, there is little left to discuss and no valid reason for further delay.

Mr. Chairman, I thank you for this opportunity to present our views, and would be happy to answer any questions you may have.

PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, AFL–CIO

Introduction

The National Association of Government Employees (NAGE) is an affiliate of the Service Employees International Union, the fourth largest union in the AFL–CIO. NAGE represents more than 200,000 civilian Federal employees all across the country and, on their behalf, we welcome this opportunity to appear before the Senate Governmental Affairs Committee to present our views on S. 185, a measure intended to achieve long overdue reform to the Hatch Act. With the overwhelming 333 to 86 vote in the House of Representatives on March 4, 1993, we are one step closer to enacting this legislation.

NAGE is pleased to present testimony evincing our strong public support for S. 185, the Hatch Act Reform Amendments of 1993. At the outset, we would like to note our deep appreciation of the continuing efforts of Chairman John Glenn in introducing this bill and in focusing a spotlight on the need to reform a pernicious system that effectively denies millions of Americans their constitutional rights to fully participate in our national political process.

Background

The legislation that bears the name of former Senator Carl Hatch was originally enacted at a time when the nature of the Federal service was significantly different from today. The stated intent of the 1939 Hatch Act was to correct alleged abuses of the merit system and to protect Federal employees from political coercion and forced political alliance. At the time of its enactment, many observers believed that the Hatch Act was a blessing for the Federal employee. It was widely accepted that the legislation freed the individual employee from any fear of coercion or intimidation by government officials, and provided enhanced job security.

The intent to protect employees from such abuse or intimidation by their supervisors was, and remains, appropriate and welcome. However, the protections accorded by the Hatch Act do not justify the pernicious violations of First Amendment rights arising from the overly broad and vague language of the statute. Today, the political activity restrictions embodied in the Act represent an outmoded, overly broad, and thoroughly confusing collection of more than 3,000 administrative determinations and rules that, in fact, work to coerce Federal employees from participating in many political activities, including some currently permissible under the Act. Further, the vagueness of the statute has opened the door to vindictive and selective enforcement of the Act.

The Hatch Act is Outdated Legislation

That the time for Hatch Act reform has arrived appears beyond dispute. The need for reform becomes abundantly clear when one considers the many changes that have occurred within the Federal service since 1939. In 1939, less than 32 percent of the Federal work force was under the classified merit system. Today, some 80 percent of the work force is under the merit system and the protections that system affords.

In 1939, widespread abuses of political manipulation occurred. Today, such abuses are not unchecked by the National media, worker organizations, and Congressional investigative staff. Since 1939, new codes for employee ethics have been developed, and collective bargaining, grievance procedures and other employee protections have become well established within the Federal workforce. Further, the Civil Service Reform Act of 1978 provided Federal employees with extensive additional protections.

While the Hatch Act was originally intended to insulate employees from coercion, it has become a direct infringement upon the Constitutional rights of the very persons it was designed to protect. Further, by the very vagueness of its language, the Hatch Act has forced large numbers of Federal employees into abandoning currently lawful participation in the political process.

Certainly, neither Federal employees nor Congress consider Hatch Act reform a new issue. In both the 100th and the 101st Congresses, Congress conducted extensive hearings on Hatch Act reform. In the 101st Congress, both the House and the Senate overwhelmingly passed H.R. 20 and S. 135 with strong bipartisan support. President Bush vetoed the measure and while the House overwhelmingly overrode the veto, the Senate failed to override his veto by only two votes.

The Hatch Act's Restraint on Federal Employee's Participation in the Political Process Hurts the Country

With the 1992 election came a mandate for change in our government. Those who are currently working within the government and face the frustrations of the existing problems on a day-to-day basis are uniquely qualified to come up with suggestions for changes and improvements to our government. Nurses, Nurses' Assistants, and other VA personnel understand the intricacies of many problems with health care in America and can offer valuable insights. The DOD Police Officers and Federal Protection Officers are well positioned to propose strategies for the war against crime and drugs. The civilian employees of the Defense Department are best situated to voice concerns and make recommendations about plans for conversion of military bases to civilian uses. Federal employees, because of their working knowledge of government programs, have a unique contribution to make to improving the quality of America's political debate that is currently stifled by the Hatch Act. By restraining Federal employee's participation in political processes, the Hatch Act bridles those who have much to contribute to bringing about positive changes to our government.

The Hatch Act Infringes on First Amendment Rights

The First Amendment to the Constitution guarantees to all Americans the right to participate in the political process and to influence the formation of government in accordance with democratic ideals. The Hatch Act imposes political restrictions of Federal employees by preventing Federal workers from running for public or party office at any level and from participating in any partisan political campaigns, either as volunteers or paid employees. In so doing, the Hatch Act denies this fundamental right to millions of American citizens on the sole basis that they have selected careers in the Federal service.

The Office of Special Counsel enforces the current law through a confusing collection of 3,000 regulatory rulings. These complex rulings allow Federal and postal employees to speak publicly on political subjects, but not at political gatherings; they may attend political conventions, but not serve as delegates; they may sign nominating petitions, but not circulate them; they can place bumper stickers on their cars, but cannot give bumper stickers to their friends. Because the law contains confusing inconsistencies, it is often over-enforced, resulting in a chilling effect which discourages even the limited participation now allowed under law.

The Federal workforce is hardworking and dedicated, and NAGE is proud to represent a substantial portion of them. The Hatch Act is premised upon the apparent assumption that the average Federal employee is inherently corrupt, or inherently corruptible. NAGE steadfastly rejects such an assumption. The Hatch Act, seemingly enacted under this unfair view of the Federal service, curtails the Constitutional rights of almost 3 million Americans. S. 185 would restore these rights by permitting Federal employee involvement in political activities, thus contributing to the health and vitality of the democratic process.

S.185 Would Restore Constitutional Rights While Continuing to Protect Federal Employees from Political Coercion

It should be noted that S. 185 would not only free Federal employees to participate fully in the political process, it would also provide strong, effective mechanisms to protect the exercise, or non-exercise, of those political rights. In this regard, S. 185 represents greater security against coercion for Federal workers than the present legislation provides. By its terms, S. 185 prohibits Federal Government officials from using their authority to influence, intimidate or otherwise interfere with the rights of their subordinates. To the extent that such protections are required, S. 185 offers considerably *more* effective protection for Federal employees than the Hatch act.

S. 185 would allow voluntary, off-duty activities of a partisan nature so long as such activities do not disrupt the impartial administration of the government. Further, under S. 185, Federal employees could run for non-partisan office, on their own time and in a requested leave status. Clearly, the bill's provisions cannot reasonably be considered a threat to our system of government, or to the job security of any individual employee.

S. 185 will erase the disturbing "chilling" effect created by the vague and imprecise language of the Hatch Act on otherwise lawful political activities by Federal employees. S. 185 clearly enunciates the acceptable types of Federal employee conduct and those which may disrupt or interfere with the efficiency and effectiveness of government operations. The latter remain unlawful under the language of S. 185. As a result of the clarifications of S. 185, Federal employees would no longer have to forego their rights to participate in the democratic process out of ignorance or confusion over the current law's application. S. 185 represents a dramatic improvement in clarity and precision.

It is because S. 185 will so successfully protect the Federal employee from improper pressures while allowing for full freedom of political expression that NAGE and its membership endorse this bill so wholeheartedly.

Conclusion

S. 185 recognizes and protects the unquestioned need for a fair, impartial Federal workforce. At the same time, S. 185 remedies the weaknesses and inequities of the present law. In this manner, S. 185 balances the dual interests of sound, fair government, and protection of fundamental Constitutional rights and values.

NAGE applauds the Chair and other Members of the Committee for taking this important step in restoring to Federal employees their full rights as citizens. NAGE urges that S. 185 be swiftly approved by the Committee on Governmental Affairs, the U.S. Senate, and the House of Representatives, and signed into law by President Clinton. In this manner, Federal employees can regain their constitutionally protected rights to participate in our political democracy. Once again, Mr. Chairman, we thank you for the opportunity to appear and present our views.

AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, AFL–CIO
WASHINGTON, DC
April 29, 1993

On behalf of the American Federation of State, County and Municipal Employees (AFSCME), which represents 1.3 million federal, state, county and local government employees across the nation, we want to express our strong support of S. 185, Hatch Act Reform. The legislation will be the subject of hearings before the Governmental Affairs Committee this week. We request that this letter be included as part of the hearing record.

Our union has a unique perspective on the issue of political restrictions on government employees. Given our large membership and the broad range of governments for which our members work, we have a great deal of experience in protecting the rights and representing the interests of public employees in jurisdictions that expressly restrict the political activities of their employees and those that allow virtually complete political freedom.

Our experience in these different states leads us to support S. 185. This important legislation would remove most restrictions on political activities of federal employees while providing them with greater protection against coercion.

Restricting the political rights of public employees does not prevent political coercion or establish the neutral administration of government. Too often, these political restrictions are selectively enforced and arbitrarily used to harass public employees.

The First Amendment right of expressing one's point of view and organizing with others on behalf of an idea is fundamental to our form of self-governance. Without these guarantees, our democracy would be an empty shell. Given the importance of these rights, they should not be infringed upon, unless there are compelling reasons to do so.

We would like to point out that H.R. 20, the Hatch Act Reform bill, as passed by the House of Representatives, would allow federal employees to run for elective public office, except for federal or state-wide offices. However, the provisions of the original Hatch Act which describe those activities which are prohibited to state and local government employees bar those employees from being a candidate for any elective office. It seems incongruous that the federal government would apply greater restrictions to the political activities of state and local government employees than it does to employees of the federal government when the only basis for regulating the activities of those state and local government employees is that they are employed in positions which are funded in part with federal money. We continue to

believe that state and local government employees should be allowed the same freedom as federal employees in running for elective office.

We urge the Governmental Affairs Committee to remove the current Hatch Act restrictions and to permit governmental employees to fully enjoy their First Amendment rights and participate to the extent of their choosing in our democratic process. By so doing, they can join in molding the future course of our nation as full citizens.

We urge the Committee to expeditiously approve S. 185.

Sincerely,

GERALD W MCENTEE
International President
WILLIAM LUCY
International Secretary-Treasurer

PREPARED STATEMENT OF JOHN N. STURDIVANT

Mr. Chairman and Members of the Committee: My name is John N. Sturdivant. I am President of the American Federation of Government Employees, AFL–CIO, which represents over 700,000 active and retired government workers across the country. With this statement, we wish to indicate our continued support for reform of the Hatch Act and to urge, in the strongest possible terms, passage of legislation to achieve this long sought goal.

The Congressional sponsors of Hatch Act reform are convincing evidence of a truly bipartisan effort. Organizational supporters are as diverse as their memberships: Federal employee unions, postal unions, professional organizations, management associations, etc. Public employee supporters are as diverse as this nation's citizenry and include both rank-and-file and management employees, professionals, clerical, and blue collar workers, and Republicans, Democrats and independents. But, what is common to most public employees who advocate Hatch Act reform is that they almost universally espouse measures which work toward preserving a politically neutral civil service as well as towards eliminating patronage. And, they clearly understand that Hatch Act reform will not detract from this goal.

The Hatch Act, passed in 1939, was intended to insure that the civil service would be politically neutral and the spoils system would be eliminated. Since the passage of the Hatch Act, however, two very significant things have occurred. First, the very issues which became motivating factors for passage of the Hatch Act in the first place, are now embodied in other statutes. These will remain in effect if Hatch Act reform is achieved. They include a multitude of statutory provisions, many criminal, which insure the neutrality of the civil service and mandate that personnel practices be based on merit rather than on a patronage basis. (Attached is a list of some of those statutes and statutory provisions.) Hence, today's need for Hatch Act type restrictions should be stated in terms of those specific issues which are not covered in other statutes. The Hatch Act reform measures now pending achieve this.

Second, the over 3,000 Hatch Act decisions, many of which are not formally published, are indicative of the Act's ambiguity and therefore, of how employees are chilled in the exercise of the political rights they now have. This is patently unfair to Federal employees. They deserve to have the cloud of uncertainty and ambiguity, inherent in the current statutory provisions and administrative rulings, removed. The Hatch Act reform measures now pending will accomplish this.

For these reasons, no valid arguments can be made against Hatch Act reform. Further, for these same reasons, 41 of the 50 states have now enacted measures permitting broader political freedoms for their state and local public employees than what is permitted Federal and postal employees. Contrary to arguments against Hatch Act reform, the 41 states which permit public employees to participate meaningfully in partisan politics provide testimonials to the fact that such reform has not in any way impinged upon the integrity of the states' politically neutral civil services.

S. 185, as well as H.R. 20, the House version of Hatch Act reform, *amends* or *reforms* the Hatch Act. It does not repeal it. It simply gives Federal employees the option of becoming more politically active if they so choose and strikes a balance between the constitutional rights of Federal employees and the need of government to maintain an unbiased civil service. Both measures not only strengthen many of

the existing provisions of the law but clarify them so that all employees know precisely what activity is permissible. In some instances, the proposals are more stringent than current law.

The language of the current Hatch Act provides that employees "may not use [their] official authority or influence for the purpose of interfering with or affecting the result of an election; or take an active part in political management or in the political campaigns" (5 U.S.C. § 7324). It also provides that an employee "retains the right to vote as he chooses and to express his opinion on political subjects and candidates". This has led to confusion because, in some instances, it has been unclear how one can express his opinion on a candidate without being said to have been taking "an active part in a political campaign".

S. 185 specifically continues the prohibition against employees' using their official authority or influence for the purpose of interfering with or affecting the result of an election. It also would reduce the confusion over permissible activities by clearly providing that:

> Federal and postal employees will not engage in political activity while on duty, in any building where the business of the government is being conducted, while wearing a uniform or official insignia identifying them as a public employee, or while using a government vehicle.
>
> Employees will not be permitted to run for partisan political office at any level.
>
> Employees will not be allowed to solicit, accept or receive political contributions from the general public, a superior, or in a government building.

Under S. 185, the current penalties of dismissal from employment or at a minimum, suspension of no less than 30 days, for Hatch Act violations would be changed. An employee who has been determined by the Merit Systems Protection Board to have violated the Act on two occasions would be removed. In addition, employees will continue to remain subject to the fines and jail sentences of up to 3 years for certain violations of Federal criminal statutes including the prohibition against soliciting contributions.

When the Hatch Act was passed 50 years ago, its provisions were applicable to employees in the competitive service. At that time, this meant the restrictions were applied to approximately 10 percent of the workforce. Current Hatch Act provisions cover all employees in executive agencies and the postal service as well as employees of the D.C. Government. However, the Hatch Act does not cover employees paid from the appropriation for the office of the President, the head or assistant head of an executive or military department or employees appointed by the President by and with the advice and consent of the Senate. It is easy to see how these exemptions could create an opportunity for political pressure to be brought to bear on subordinates. The reform measures would be applicable to all employees in the postal service or in an executive agency. The only exceptions are the President and the Vice President and members of the uniformed services. Thus, it severely curtails the number of executive branch employees who are exempt from Hatch Act prohibitions and who could bring political pressure to bear on their subordinates.

The whole context in which the government now operates has changed since 1939 because of enactment of various statutes. As mentioned above, these statutes protect employees from many of the very "evils" that were motivating factors behind enactment of the original Hatch Act. Because these statutes would remain in effect if the reform measures are enacted, in reality, reform is really a clarifying measure. It is sought partly because it would make clear exactly what political activities employees may or may not engage in.

The right of American citizens to participate freely in this nation's political process falls within the realm of the First Amendment rights guaranteed by the Constitution of the United States. However, such rights are not absolute. They may be limited or restricted when there is a compelling or overriding reason to do so. The government's need to insure that its business is efficiently and neutrally conducted is the broad basis upon which the Supreme Court has determined that the *limited* restriction of public employees' rights to be politically active is constitutional. However, constitutionality rests upon a clear showing by the government of a *need* for restriction. Once the need is expressed, then such restriction must be clearly defined and narrowed in order that it only proscribes that activity which would impinge upon the basis for the Government's articulated, compelling need.

The need to restrict the political activities of employees is met by a balancing test—the needs of the government versus the rights of employees. Those who presently oppose reform have failed to balance the scale with their arguments. For example, opponents say that reform will lead to politicization of the workforce but they fail to articulate clearly how this will occur. Opponents suggest that reform will

lead to a return of the spoils system but fail to provide any specifics on why they believe this would be the result. Opponents of reform argue that the measure will pave the way for coercion, which they specify as being "subtle coercion", but give no examples of how this could occur.

Mr. Chairman, government employees are dedicated individuals who are fully aware of the small role each of them plays in providing vital services to the American taxpayer. They live in every city and town in this country, and rather than being a uniform group who think with one mind, they are as diverse as this nation's population and a reflection of the communities in which they live.

The idea that these three million citizens would set aside their diverse backgrounds and strong feelings about their country to become a monolithic, unthinking voting block is absurd. Like their jobs, government employees take seriously their duties as citizens. I am certain they thoughtfully consider organizational endorsements, such as those made by the AFL–CIO or the National Rifle Association, but like other good citizens, realize such endorsements are only one piece of information about a candidate to be weighed along with information provided by the candidates themselves, the National and local media, family and friends.

Further, because they reflect the diversity of American society, there is no evidence to suggest this group of individuals would be any more interested in participating in the political process than the average citizen. In any community there are a number of people who keep up with civic affairs, a smaller number who actually vote on election day, and a much smaller number who find the time to become involved in campaigns. Government workers, who have the same financial and time constraints imposed by raising families, caring for elderly relatives, and other circumstances, would be no different.

The ultimate goal sought by AFGE and the many others who support reform is to permit public employees to participate in partisan political activities as fully and freely as is possible while still maintaining the integrity of a competitive civil service, based on merit principles, where the government's business can be efficiently and effectively carried on free from political influence. The bipartisan proponents of Hatch Act reform have seriously addressed each and every specific concern raised about Hatch Act reform.

In closing, Federal employees have been disadvantaged, unduly restricted, chilled in the exercise of their first amendment rights, subjected to an unclear statute, subjected to ambiguous rulings, and treated as second class citizens for far too long. AFGE seeks Hatch Act reform for the purpose of striking a balance between the constitutional rights of employees and the need of the government to maintain an unbiased civil service, free from political coercion and which is based on merit principles rather than on a spoils system. We do not seek reform for any other reasons whatsoever. We have no ulterior motives. The measure would not cost any money nor add to the deficit. Hatch Act reform is neither a Democratic nor a Republican issue; it is an issue of political democracy and individual freedom. It is simply fair, equitable and good public policy—a measure which we believe should become an entitlement for public employees.

We appreciate this opportunity to express our views on Hatch Act reform and we respectfully urge the Senate to act swiftly and adopt S. 185.

STATUTES AND STATUTORY PROVISIONS WHICH ARE INTENDED TO INSURE A POLITICALLY NEUTRAL CIVIL SERVICE

The following statutes, enacted after passage of the Hatch Act in 1939, serve a useful purpose in preserving the neutrality of the workforce and negating practices relating to the spoils system:

Civil Service Reform Act of 1978, P.L. 95–454, 92 Stat.111.

Chapter 23—Merit System Principles

5 U.S.C. §2301(b)(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

5 U.S.C. §2301(b)(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to *political affiliation*. . .

5 U.S.C. §2302(b)(1) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with

respect to such authority discriminate for or against any employee or applicant for employment——

(E) on the basis of marital status or *political affiliation,* as prohibited under any law, rule, or regulation. . .

(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity.

Federal Criminal Code provisions—18 U.S.C. §§594, 595, 597, 598–607.

18 U.S.C. §594 prohibits the attempt or use of intimidation, threat, or coercion for the purpose of interfering with another's right to vote. A person in violation of this section shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

18 U.S.C. §595 prohibits any person employed by the Federal Government in an administrative capacity from using his official authority for the purpose of interfering with, or affecting, the nomination or election of certain candidates for national office. Violators are subject to a fine of not more than $1,000 or 1 year in prison, or both.

18 U.S.C. §597 prohibits the making, offering, solicitation, acceptance or receipt of expenditures in consideration for one's vote or the withholding thereof. Violation of this section carries a fine of not more than $1,000 or maximum imprisonment of 1 year, or both. If the violation is willful, a fine of not more than $10,000 and imprisonment of not more than 2 years, or both, shall be assessed.

18 U.S.C. §598 prohibits the use of congressional appropriations for work relief, or the exercise of authority conferred by an appropriations act, for the purpose of interfering with an individual's right to vote. Violation of this section warrants a fine of not more than $1,000 or imprisonment for not more than 1 year, or both.

18 U.S.C. §599 prohibits a candidate from the direct or indirect promise or pledge, or the use of his influence, of the appointment of any person for the purpose of procuring support for his candidacy. Violators shall be fined not more than $1,000 or imprisoned not more than one year, or both. Willful violation carries a maximum fine of $10,000 or 2 years in prison, or both.

18 U.S.C. §600 prohibits promise or special consideration for employment, position, compensation, contract, appointment or other benefit made possible by an Act of Congress to any person in return for any political activity, or the support of a candidate or political party. Violators of this section shall be fined not more than $10,000 or imprisoned not more than 1 year, or both.

18 U.S.C. §601 prohibits causing any person to make a contribution for the benefit of any candidate or political party through the denial of deprivation of any employment, position, or work with an agency of the Federal Government. A maximum fine of $10,000 or imprisonment of not more than 1 year, or both, shall be levied against violators.

18 U.S.C. §602 makes it unlawful for a candidate for Congress, elected representative, employee or officer of the Federal Government to knowingly solicit contributions, within the meaning of section 301(8) of the Federal Election Campaign Act of 1971, from any other officer, employee or person. Any individual in violation of this section shall be fined not more than $5,000 or imprisoned not more than 3 years, or both.

18 U.S.C. §603 prohibits any officer or employee of the United States from making any contribution to any other officer, employee, Senator or Representative, if the person receiving such contribution is the employer or employing authority of the person making the contribution. Violators are subject to a fine of not more than $5,000 or 3 years in prison, or both.

18 U.S.C. §604 prohibits solicitation or receipt of any assessment, subscription or contribution for any political purpose, from any person known to be receiving or entitled to compensation, employment or benefit generated by Congressional appropriation for work relief purposes. Violators shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

18 U.S.C. §605 prohibits the disclosure, for political purposes, of the names of persons on relief, to a political candidate, committee, or campaign manager, or the receipt of such a list. Violators shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

18 U.S.C. §606 prohibits officers or employees of the United States from discharging, promoting, or degrading the rank of any other officer or employee for giving, withholding, or neglecting to make a political contribution. Violators shall be fined not more than $5,000 or imprisoned not more than 3 years, or both.

18 U.S.C. §607 makes it unlawful to solicit or receive any contribution in a room or building occupied in the discharge of official duties by any person mentioned in section 603 above. Any person in violation shall be fined not more than $5,000 or imprisoned not more than 3 years, or both.

Expansion of the Competitive Service.

At the time the Hatch Act was passed, only about 10 percent of all Federal employees were covered. Now there are few employees who are not covered and the Hatch Act reform bill will continue such broad coverage. Further, 5 U.S.C. §1308 requires that Congress be provided with an annual report setting forth a statement in the administration of the competitive service, the rules and regulations and exceptions thereto in force, the reason for exceptions, etc. §3302 gives the President sole discretion for providing for necessary exceptions of positions from the competitive service and thus, possibly from Hatch Act coverage.

Government in the Sunshine Act, P.L. 94–409, 5 U.S.C. §552b, and the sunshine provisions of other various statutes.

Freedom of Information Act, 5 U.S.C. §552

Federal Election Campaign Act Amendments of 1984, P.L. 93–443, 88 Stat. 1263.

Includes public financing of presidential election and limits contributions and expenditures for Federal candidates.

Strengthened oversight functions of Congress

Whistleblower Protections

Investigative Free Press

PREPARED STATEMENT OF ROBERT M. TOBIAS, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

Mr. Chairman, Members of the Committee, thank you for this opportunity to express the support of the National Treasury Employees Union for S. 185, the Hatch Act Amendments of 1993.

Mr. Chairman, I believe that Federal employees should be protected from political coercion; that we should keep politics separate from the impartial administration of our laws. But, I believe that many things have changed since the Hatch Act was adopted in 1939 that will allow us to accomplish these goals without denying Federal employees the same First Amendment rights and the same opportunity to participate in the political process that other American citizens enjoy. When the Hatch Act was adopted in 1939, a minority of Federal Government jobs were filled by examination. Today nearly 80 percent of government positions require one to pass a standard exam, thus, jobs are filled based on objective criteria and cannot be influenced by subjective "politics." The Merit Systems Protection Board was specifically created in 1977 to protect the civil service from any lapse into the "spoils system" syndrome. The Office of Special Counsel conducts examinations and initiates administrative prosecutions of any violations.

In addition, the criminal code provides vast protection not present in 1939.

Title 18, Section 599 prohibits a candidate from the direct or indirect promise or pledge, or the use of his influence, or the appointment of any person for the purpose of procuring support for his candidacy. Violators are subject to a maximum fine of $10,000 and/or 2 years in prison.

Title 18, Section 600 prohibits promises or special consideration for employment, position, compensation, contract, appointment or other benefit made possible by an Act of Congress to any person in return for any political activity or the support of

a candidate of a political party. Violators of this section shall be fined not more that $10,000 or imprisoned not more that 1 year, or both.

Title 18, Section 601 prohibits causing any person to make a contribution for the benefit of any candidate or political party through the denial or deprivation of any employment, position, or work with an agency of the Federal Government. Violators face a maximum fine of $10,000 or 1 year in prison or both.

Title 18, Section 606 prohibits officers or employees of the United States from discharging, promoting, or degrading the rank of any other officer or employee for giving, withholding, or neglecting to make a political contribution. Violators are subject to a fine of $5,000 or 3 years in prison, or both.

I do not deny that a situation could develop in which the coercion would be so subtle that the law would be difficult to enforce. But that possibility is so hypothetical and remote that it should not prevent needed changes in the Hatch Act.

It is very difficult to prove coercion or retribution in a sexual harassment case and while some might have argued in 1940 that women should be protected from such harassment by prohibiting them from performing some jobs, hopefully no one would argue that today. The accepted view is that we will make the laws against sexual harassment as tough and as enforceable as possible, but we will not limit a woman's right to work where she chooses in order to "protect" her.

We need to strike a similar balance with regard to "protecting" Federal employees. The possibility that an isolated case of coercion might go unpunished is not reason enough to deny 3,000,000 people the opportunity to participate to whatever extent they choose in the most basic elements of our democratic process.

The question of the perception of unfairness is often raised in the context of allowing Federal employees to be active in politics. But, I believe the facts show that there is sufficient protection against unfairness that will continue under S. 185.

First, the most visible officials and other policy-makers throughout the Federal Government are not covered by the Hatch Act now. One cabinet member can endorse a candidate for President while another endorses his opponent. Second, Title 18, Section 595 of the criminal code provides that, "whoever, being a person employed in any administrative position by the United States or by any department or agency thereof . . . uses his official authority for the purpose of interfering or affecting, the nomination or the election of any candidate for the office of President . . . shall be fined not more than $1,000 or imprisoned not more than 1 year, or both." Third, those covered by the Hatch Act have always been subject to dismissal for using their "official authority or influence for the purpose of interfering with or affecting the result of an election." (5 USC 7324) They would continue to face dismissal for that offense under Section 7323 of S. 185.

The most insidious aspect of the current Hatch Act is that its vagueness and complexity create a chilling effect. Federal employees often do not participate in permissible activities because they have heard so many conflicting opinions on what is and isn't allowed. We cannot even satisfactorily advise our members. Advisory opinions of the Special Counsel are not subject to judicial review. An employee must put his or her job in jeopardy in order to receive a final court decision on whether a particular action is permissible or impermissible under the Hatch Act.

As you probably know, when the Congress adopted the Hatch Act in 1939 it incorporated by reference 3,000 separate rulings by the Civil Service Commission. Taken together with the criminal laws that deal with political activity, Federal employees are faced with a morass that is so formidable that many decide to play it safe and don't participate, rather than trying to figure out where the line is.

NTEU believes very strongly that the Federal workers we represent should not be subject to political coercion. Believe me, NTEU would not hesitate to use any of its resources to see that anyone who would try to coerce our members be removed from his or her position and prosecuted to the full extent of the law.

When the Hatch Act was adopted there was no such thing as the Federal Election Commission. Today, as I'm sure you are all well aware, every aspect of Federal campaigns is subject to disclosure and regulation. There was no Merit Systems Protection Board in 1939 and few Federal workers had union representation. There was no television in 1939 and the deference the Media showed to politicians then is long gone. Congress itself didn't have the staff to look into a constituent's complaint about an unfair contract award or political pressure at some agency.

The Hatch Act may have been a good idea in its time, but it is not 1939 anymore.

Thank you, Mr. Chairman for introducing this important reform bill. I urge you and the members of the Committee to act quickly to pass S. 185 and allow Federal employees the political freedom they deserve.

PREPARED STATEMENT OF ANTONIO J. CALIFA

ACLU SUPPORTS REFORM OF THE HATCH ACT

It is my pleasure to submit testimony to you today on behalf of more than 270,000 members of the American Civil Liberties Union (ACLU). The ACLU strongly supports reform of the Hatch Act. We commend the chairman, Sen. Glenn, for introducing S. 185 and thank you for allowing us to express our views on this most important matter.

Background

We recently celebrated the bicentennial of the signing of the United States Constitution, a wondrous document which ensures freedom for the individual, and for the minority against the majority. The flexibility and strength of this remarkable governance system have made the United States unique in the world. Nowhere else does such a heterogeneous and large population have such unfettered freedom of expression. Concurrently with the exercise of this freedom, we have the blessing of domestic tranquillity. Political opinion and dissent are fully expressed with the ballot, not the bullet. The humblest citizen can criticize the President of the United States and work actively to replace him. This state of events is not at all commonplace in history. World history is replete with instances of repression and conflict and strictures on speech.

The American guarantee of freedom of speech is found in the First Amendment to the United States Constitution, which reads as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceable to assemble, and to petition the Government for a redress of grievances.

The First Amendment not only guarantees freedom of expression but also guarantees freedom of political expression and action. Indeed, active participation in the political process was a fundamental goal of the Founders—and one of the chief reasons for the Revolutionary War. Prominent men and women risked everything, even their lives, because the British government excluded them from the political process.

The First Amendment embodies fundamental rights and occupies a place in our constitutional hierarchy reserved for those freedoms we hold most important. These essential rights may not be abridged except when there is a compelling state interest. The abridgment must be precisely and carefully drawn to preserve the state interest. As much as possible of the First Amendment must be left unfettered. As we shall show later, the Hatch Act must be changed because it impermissibly and unnecessarily infringes on First Amendment rights.

The Hatch Act—Legislative History

A study of the legislative history of the Hatch Act shows that it was enacted with little debate in 1939. There were *no* public hearings. Even this limited legislative history gives us some notion of the intent of Congress when passing the Hatch Act. The overriding concern of Congress was with Section 7324(a)(1) of the Hatch Act—the use of a federal employee's official authority or influence to affect the outcome of an election. The official title of the Hatch Act was "An Act to Prevent Pernicious Political Activities."

Passage of the Hatch Act was seen as a response to reports of abuse of federal employees during the 1936 and 1938 elections. Senator Morris Sheppard of Texas headed a special Committee on Campaign Expenditures and use of funds and found cases of political *coercion* mainly involving Workers Progress Administration (WPA) supervisors and employees.

> It is a matter of common knowledge in almost every community of the Nation the taxpayers' money appropriated for W.P.A. was used to coerce and intimidate needy men, women and children. Many of those in charge of this relief boldly insisted that voters change their party registration and vote for candidates favored by those in charge of the W.P.A. and if they refused, they were denied W.P.A. work or were discharged. . . . Tens of thousands of people receiving large salaries were rendering no service to the people. They were devoting their time in pernicious political activities . . . as pointed out by the press, the National Grange, the Republican Party, and other groups, the Hatch bill solves this problem.[1]

The legislative history is replete with references to "taking the veil."[2] This was a shorthand reference to the right-privilege distinction. Until relatively recently, public employment was viewed by our courts as a *privilege* that government could

bestow on its own terms. In return for the privilege of government employment, the government could demand that an individual give up certain rights. This theory, that government can condition public employment upon the waiver of first amendment rights, has been thoroughly rejected by the Supreme Court. *Connick* v. *Myers,* 461 U.S. 138 (1981).

The Hatch Act passed Congress on August 2, 1939. It has been amended many times. The chief Hatch Act provisions can be found at 5 U.S.C. Secs. 7321–7327.

Hatch Act—Provisions

The ACLU strongly supports a change in Section 9(a) of the Hatch Act, 5 U.S.C. Sec. 7324(a)(2) which reads, in part, as follows:

> An employee . . . may not—
>
> (1) use his official authority or influence for the purpose of interfering with the result of an election; or
>
> (2) take an active part in political management or in political campaigns.
>
> For the purpose of this subsection, the phrase 'an active part in political management or in political campaigns' means those acts of political management or political campaigning which were prohibited of employees in the competitive service before July 19, 1940 by determinations of the Civil Service Commission under the rules prescribed by the President.

There are over three thousand such administrative determinations.

The ACLU joins other organizations testifying before this distinguished Committee in opposing coercion and supporting free speech. An employee should not be allowed to use his official position as authority or influence to affect or attempt to affect the influence of an election. This coercion is inimical to First Amendment rights and must not be allowed. Employers cannot use their positions of trust to intimidate workers or the public to conform to their political judgment. This is the very antithesis of free and robust expression of First Amendment rights. We wholeheartedly support S. 185 in its attempt to protect the worker from political coercion by other workers or by a supervisor.

The ACLU urges reform of 9(a)(2) of the Hatch Act which prohibits an employee of the Federal government from taking an active part in political management or in political campaigns. As written, and as applied, this is a bad law—a "gag" law. The severe deprivation of freedom of speech stemming from this prohibition is neither justified by fears of political coercion nor necessitated by the desire for a neutral civil service.

The Hatch Act and the First Amendment

Freedom of speech, guaranteed by the First Amendment, is a fundamental right of a free people. It stands at the pinnacle of rights cherished by Americans. The general standard for protection of speech is that it must be permitted unless a public danger is created by its exercise. This criteria does not permit the political sterilization of several million federal and postal workers in jobs ranging from janitorial to professional specialization simply for fear that coercion might be applied by superiors who insist that subordinates participate in partisan activity as the price of job advancement. The possibility that an employee could be coerced is not a public danger of a magnitude that justifies deprivation of speech, nor is the possibility of coercion eliminated by removing from all employees their rights of free expression, since advancement within the government is always a matter of discretion on the part of the employee's supervisor.

Let us analyze the Hatch Act according to the traditional "strict scrutiny" standard used in numerous cases.

Any statute *regulating* political speech must meet three criteria: (1) a compelling state interest must be at stake; (2) there must be a demonstrated need for regulation; and (3) the restriction must be narrowly drawn so as not to impose limitations greater than those necessary to protect the interest at stake.[3]

Does the Hatch Act "Regulate" Speech

Assuredly, the Hatch Act deals with speech. Participation in the political process is at the very essence of what the First Amendment means by speech and what the First Amendment protects.[4] The Hatch Act infringes very substantially on the First Amendment. The Hatch Act not only regulates speech, it *prohibits* speech by federal employees and workers. In this aspect, the Hatch Act is unique. If a federal employee or federal worker exercises rights that his or her fellow citizens routinely exercise, the federal employee will lose his or her job.[5] Here are some examples of the

political activities that are so "pernicious" Americans must be deprived of their livelihood if they engage in them. These examples are from the Office of Personnel Management.[6]

Recent pronouncements from the United States Office of Personnel Management, successor to the United States Civil Service Commission, interpret Section 9(a) to prohibit: (1) being a candidate for nomination or election to a national or state office; (2) becoming a partisan candidate for nomination or election to any public office; (3) campaigning for or against a political party or candidate in a partisan election for public office or political party office; (4) serving as an officer of a political party, a member of a national, state or local committee of a political party, an officer or member of a partisan political club, or being a candidate for any of these positions; (5) participating in the organization or reorganization of a political party, organization, or club; (6) soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose; (7) selling tickets for or otherwise actively promoting such activities as a political dinner; (8) taking an active part in managing the political campaign of a candidate in a partisan election for public office or political party office; (9) working at the polls on behalf of a candidate or political party by acting as a checker, challenger, or watcher; (10) distributing campaign literature; (11) serving as a delegate, alternate, or proxy to a political party convention; (12) addressing a convention, rally, caucus, or similar gathering of a political party in support of or in opposition to a candidate for public office or political party office, or on a partisan political question; (13) endorsing or opposing a candidate in a partisan election through a political advertisement, broadcast, campaign literature, or similar material; (14) driving voters to the polls on behalf of a political party or candidate in a partisan election; or (15) initiating or circulating a partisan nominating petition.

In practice, the trampling of First Amendment rights goes even further. In 1987, a House Subcommittee heard testimony from union members who had been told that the following were prohibited by the Hatch Act:

- A postal worker could not appear in a photograph contained in his wife's campaign flyer.
- A Social Security disability investigator could not comment in a union newspaper on which candidate he preferred after the union had heard all candidates speak.
- A worker was told he could not seek a post in a non-partisan election. He was also told he could not put a campaign sign in his front yard.
- Testimony was given concerning a prohibition of local union voter registration drives, once the International Union had endorsed a candidate.

Compelling State Interest

The compelling state interest advanced by the government is in a Civil Service governed by the merit system. In such a Civil Service, promotion is based purely on merit. An employee could not be coerced into partisan political activity in order to advance within the Civil Service. We will assume *arquendo* that the state has an important interest in preferring advancement within its Civil Service to be based on merit and not patronage or coercion.

There Must Be a Demonstrated Need for Regulation

There was *some* showing of need for regulation. In 1939, almost 50 years ago, Sen. Sheppard of Texas showed that a few W.P.A. workers were coerced into voting a certain way. This abuse would still be dealt with in the legislation which this Subcommittee is considering. Under S. 185, it would be illegal to coerce workers into voting a certain way. A supervisor could not use his official position or influence to threaten or force workers to do his political bidding. Thus, the provisions of 5 U.S.C. Sec. 7324(a)(1) would remain in effect.

What about Sec. 7324(a)(2)—the pernicious part of the Hatch Act which prohibits an employee from taking an active part in political management or political campaigns? There is little, if any, record of abuse in this area. Indeed, Congress "unhatched" hundreds of thousands of state and local employees from this provision in 1974. State and local employees are free to actively participate in political management and campaigning. Their freedom of speech and association has been restored for the most part. The ACLU is unaware of serious problems, creating a danger to the state, that were caused by this legislation.

In *United States Civil Service Commission* v. *National Association of Letter Carriers,* 413 U.S. 548 (1973), (hereinafter "NALC"), a decision which the ACLU considers to be incorrect, the Supreme court upheld the Hatch Act limitations on the First Amendment rights of covered employees. The Supreme Court has not taken a strong position on whether these draconian measures are necessary to preserve the merit

system. Justice White writing for the majority stated: "Perhaps Congress at some time will come to a different view of the realities of political life and governmental service," *Ibid.* at 567.

We trust that the time has come for the Congress to come to a "different view."

There is no historical justification for restrictions on voluntary off-the-job First Amendment activities by federal or postal workers. There has never been a critical, factual evaluation based on empirical evidence as distinct from supposition. Because a fundamental right is involved, the burden of proof falls on proponents of such restrictions. They have not met the burden of proof.

The Present Hatch Act Restrictions Are Not Narrowly Drawn

Abuses can occur within the Civil Service. Where you have a large Civil Service workforce under the merit system, but also under political leadership determined by an election's outcome, abuses can arise.

The restrictions on fundamental rights must be narrowly drawn. Present Hatch Act prohibitions are overbroad. The Hatch Act prohibits all partisan political activities, and many nonpartisan activities, including those voluntarily undertaken and unrewarded, which in no way reflect the influence of a patronage scheme. The Hatch Act deals with the potential problems mentioned above by prohibiting almost all political activities. Further, it does so in vague language, incomprehensible to ordinary citizens. It incorporates by reference thousands of administrative decisions dating back to the last century. As a result many harmless activities are prohibited or thought to be prohibited. There is a very definite chilling effect created by the Hatch Act. By its breadth and vagueness, the Hatch Act terrorizes federal and postal employees into a state of total political inactivity.

It is much better to deal with the real problems of government employees and political activities. Here are a few examples of the specific problems that can be resolved without the Hatch Act solution of "throwing the baby out with the bath water."

- A bar on partisan activity while on duty in Federal buildings.
- A bar on partisan activity while in uniform.
- A bar on soliciting, giving or receiving political contributions in government rooms or buildings.
- A bar on coercion.

The real problems can and should be dealt with. The Hatch Act has been shown to be draconian, subject to political manipulation and overbroad. It is vital that millions of federal workers be emancipated from this harsh and outdated law.

We conclude by quoting the eloquent defense of political freedom, by Supreme Court Justice Hugo Black in his dissent in *Mitchell.*

> The section of the Act here held valid reduces the constitutionally protected liberty of several million citizens to less than a shadow of its substance. It relegates millions of federal, state, and municipal employees to the role of mere spectators of events upon which hinge the safety and welfare of all the people, including public employees. It removes a sizable proportion of our electorate from full participation in affairs destined to mould the fortunes of the nation. It makes honest participation in essential political activities an offense punishable by proscription from public employment. It endows a governmental board with the awesome power to censor the thoughts, expressions, and activities of law abiding citizens in the field of free expression, from which no person should be barred by a government which boasts that it is a government of, for, and by the people—all the people. Laudable as its purpose may be, it seems to me to hack at the roots of a Government by the people themselves; and consequently I cannot agree to sustain its validity.

FOOTNOTES

[1] Eccles, James R., *The Hatch Act and the American Bureaucracy,* Vantage Press, New York, 1981. p. 70.

[2] *United Public Workers* v. *Mitchell,* 330 U.S. 790 (1947).

[3] *NAACP* v. *Button,* 371 U.S. 415 (1963); *Grayned* v. *City of Rockford,* 408 U.S. 104 (1972).

[4] *Connick* v. *Myers,* 461 U.S. 138 (1981).

[5] 20 U.S.C. 7327.

[6]Stephen A. Smith, "The Uncivil Servants: Public Employees and Political Expression" (A Paper Presented at the Southern Speech Communication Association Convention) Orlando, Florida, April 7, 1983.

PREPARED STATEMENT OF REED LARSON, PRESIDENT OF THE RIGHT TO WORK COMMITTEE

I am here representing the 1.7 million-member National Right to Work Committee in opposition to the junking of the 54-year-old Hatch Act.

The Committee is a nonpartisan citizens' coalition dedicated to a single purpose: to oppose compulsory unionism. Our members come from all walks of life but are united in their deep belief that Americans, as part of their birthright, must have the opportunity, but never be compelled, to join or support labor unions.

Although the idea that workers should be free from coercion on the job seems self-evident, believe me when I say that for millions of Americans, coercion on the job is a way of life. They are forced, by Federal law, to join or support organizations that they disagree with. Today, S. 185 takes another big step towards extending this coercive power to millions more American workers.

This is why the Hatch Act should be saved.

Save it for the sake of the 2.9 million Federal workers who will no longer be able to say "Sorry, I'm Hatched" when a government union political operative calls and asks them to "volunteer" time or money for their political schemes. And for all the private citizens, individuals and groups, who will be threatened, harassed, or coerced by government union czars in the guise of Federal bureaucrats, save the Hatch Act.

Because we all know who is behind Hatch Act repeal.

Not the general public. There is no groundswell of support from your states demanding repeal of the Hatch Act. I defy any member of the U.S. Senate to produce evidence of public outcry for repeal of the Hatch Act.

The one group that has the most to lose from Hatch Act repeal, Federal workers themselves, have indicated repeatedly that they wish you would leave the Hatch Act alone. In fact, a survey by the Merit Systems Protection Board in 1992 of 13,000 Federal workers found that 7 out of 10 (70 percent) of the workers quizzed did not want or saw no need to ax the Hatch Act.

Another poll by the Merit System Protections Board in 1989 of 16,000 Federal workers found almost identical results—68 percent who want you to leave the Hatch Act alone.

So who wants Hatch Act repeal? This legislation is by, for and about union-boss power.

If you don't think so, ask yourselves why then-National Federation of Federal Employees (NFFE) President Shelia Velazco told Congress that her union "welcomes the introduction of the bill [Hatch Act repeal] and urges its passage by the Senate. . . ." Yet 89 percent of NFFE's members said in a survey that they opposed weakening the Hatch Act.

Gutting the Hatch Act would authorize Federal union bosses to use the monopoly bargaining privileges now granted them by Congress to coerce Federal employees.

With Big Labor controlling Federal employees' hours, transfer requests and grievances, the phony "anti-coercion" provision in Sen. Glenn's bill won't prevent a single Federal union boss from getting all the "volunteer" political help he "requests."

You don't have to take my word for it. Even Common Cause President Fred Wertheimer can see what Hatch Act destruction will bring:

"Repeal of the Hatch Act's basic protections . . . will increase the potential for widespread abuse and open the way for implicit coercion against which *there can be no real protection.*"

Consequently, ordinary citizens face the agonizing prospect of being audited by day and opening their doors at night to find an IRS agent asking for a "contribution" to a candidate. Sounds illegal. And right now it is. But if you pass S. 185 it will be "business as usual."

And if you doubt that IRS agents could become politicized, ask the Association of Former Internal Revenue Executives, a group of retired IRS agents. They have also opposed S. 185 because "the involvement of IRS employees in partisan political activities . . . was a major factor in the corruption, inefficiency, favoritism and integrity problems" of the agency in the 1940s and 1950s.

This is not a question of political rights. It's a question of special political privileges.

The Supreme Court, a much better judge than Federal union kingpins of what is or is not constitutional, has decided time and time again that the Hatch Act *is* constitutional. And the Court went even further in stating that it "is in the best interest of the country, indeed essential, that . . . the political influence of [the Federal bureaucracy] on the political process should be limited."

And Thomas Jefferson, a man who knew a thing or two about rights, constitutional or otherwise, flatly stated that Federal electioneering by Federal workers was "inconsistent with the Constitution."

I would suggest, Mr. Chairman, that if the Committee is interested in restoring rights to Federal workers, it would begin by repealing the monopoly bargaining provisions of Federal law.

But repealing the Hatch Act will not secure rights for Federal workers.

Hatch Act repeal will only empower a few, privileged Federal union elites—at the expense of 2.9 million Federal workers and countless private citizens. Hatch Act repeal as it stands before this Committee today is the perfect vehicle for the government union bosses' drive to empower themselves at the expense of taxpayers and citizens nationwide.

Mr. Chairman, I urge you and your colleagues to reject this special interest power grab and vote against S. 185.

PREPARED STATEMENT OF THE INTERNATIONAL PERSONNEL MANAGEMENT ASSOCIATION

The International Personnel Management Association (IPMA) has carefully evaluated the "Hatch Act Reform Amendments of 1993" (S. 185) that would permit all off-duty Federal career civil service employees to engage in a variety of partisan political activities currently prohibited by the Hatch Act. We have concluded that the proposed legislation is not in the public interest and should not be enacted.

By way of introduction, IPMA is an organization representing over 1,300 member agencies that include civil service commissions merit system boards and personnel departments at the Federal, state and local levels of government. The Association also represents 65,000 individuals, primarily human resource professionals and managers in the public sector and educators in the fields of public and personnel administration. IPMA's objective is to develop an interest in sound human resource management and provide a focus and a forum for the discussion and exchange of views among practitioners, theoreticians and others throughout the United States and abroad.

The Association is concerned that (1) the involvement of career civil service employees in partisan political activities will erode citizen confidence that their laws and regulations are being impartially enforced and (2) public programs and services continue to be delivered on a nonpartisan basis without regard to the recipient's political beliefs or affiliations.

In passing the Hatch Act originally, the Congress determined that partisan political activity by Federal career civil servants and those in state government who administer Federal grant-in-aid programs must be limited if public institutions are not only to function, but also to appear to function, fairly and effectively. The Congress sought to establish a careful balance between the right of a Federal employee, as an individual, to participate in the political process, and the necessity for the country to have a nonpartisan, politically neutral civil service to administer and implement its laws. It prohibited activities that could coerce Federal career civil servants and their state government counterparts into giving up their political independence in order to retain their employment and advance in their careers. If the proposed legislation is passed, we are concerned that the career civil servant's visible participation in partisan political activities, even when not on duty, will subvert the Congress' initial intent and erode citizen confidence in the impartiality of its civil servants.

Administration of the public's business is sufficiently fraught with the opportunity for honest disagreement now, without introducing the notion that governmental decisions, whether favorable or unfavorable to the claimant, petitioner or applicant, are colored by political favoritism. A number of examples of the potential for unnecessary conflict come easily to mind:

- Taxpayers contesting Internal Revenue Service decisions concerning tax liabilities;
- Foundations seeking tax-exempt or other special tax status;

- Claimants contesting Social Security Administration decisions over benefits or disability determinations;
- Mine owners contesting decisions by the Mine Safety and Health Administration;
- Farmers and small business men contesting decisions over eligibility for Federal or state assistance;
- Grant applicants who are denied funding;
- Unsuccessful applicants for government employment or career advancement in the civil service; and
- Unemployment insurance applicants who are denied compensation.

Why even suggest the possibility that those who are responsible for making these kinds of decisions are anything but impartial and apolitical in their deliberations?

Another concern is the potential effect such a statutory change could have on relationships between political appointees, of any Administration, and the career civil servants upon whom they must rely to carry out their policies and programs. Cooperation between the policy makers and implementers is essential to effective governing. Again, it is not difficult to envision a situation, allowed by the proposed legislation, in which a career civil servant runs for political office as a partisan candidate, is defeated and returns to work. This person may encumber a position that is proximate or reports directly to a political appointee who is of the opposing political party. Will it be possible for the political appointee to have full trust and confidence in that career civil servant? If not, what effect will that have on the ability of the civil servant to function effectively, and what impact will this have on the organization's ability to perform its mission?

As an Association, we are concerned with the integrity of legally mandated merit systems. The intent in legislating such systems was to ensure that decisions concerning hiring, development and advancement of its employees be made on the basis of the relative merits of the competing applicants, rather than on the basis of their political affiliations or other nonmerit factors. We believe this change in the law would send the wrong message and that, wittingly or unwittingly, there will evolve the perception that hiring, promotions, developmental assignments and performance bonuses are best earned by demonstrating the "right politics."

We recognize that the proposed legislation attempts to incorporate protections to prevent problems of the kind referred to above. However, the atmosphere in which employees work can contain politically coercive elements even though no legally definitive evidence of coercion can be demonstrated. It is simply not possible to protect career civil servants from reprisal for overt partisan political activities. That protection is not possible in the current environment where political activities are, at most, covert and the statutory protections are strong; how much more difficult will it be to assure that protection in an environment where "off duty" partisan political activity is permitted? Is the political appointee really expected to be able to ignore political activity that is adverse to the interests of his/her party or in conflict with his/her ideological beliefs because it occurred after working hours? We believe that is far too much to expect of anyone.

The principle of political neutrality for career civil servants is a commonly accepted tenet of public employment, both in the United States and in other countries. A study of civil service laws by the United Nations concluded that "the political neutrality of the civil service is a fundamental feature of multi-party democracy and is essential for its efficient operation." [1]

Concern over the politicization of the civil service was expressed as far back in our history as the presidency of Thomas Jefferson. The excesses that led to the enactment of the Hatch Act in 1939 are well documented, and the need to insulate the civil service from partisan politics is as compelling today as it was in 1939, if not more so. The Hatch Act does not disenfranchise career civil servants; what it does is preclude them from labelling themselves as Republican or Democrat civil servants and making targets of themselves for public suspicion or political reprisal.

Close to three million Federal career civil servants, and a similarly significant number of state employees, are covered by the Hatch Act. They do not consider themselves second-class citizens and most of them are not petitioning for emancipation. In general, career civil servants accept the terms of their government employment voluntarily. They fear political coercion and unlawful discrimination far more than they covet the chance to engage in partisan political activities by running for office, attending political conventions or managing political campaigns.

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[1] Vaughn, Robert G., "Restrictions on the Political Activities of Public Employees, The Hatch Act and Beyond," George Washington University Law Review, Vol. 44, 1976, page 532.

While the proposed legislation appears limited to Federal employees, the potential impact of this legislation on state and local government employees can not be overlooked. A number of states and many local governments have laws restricting partisan political activity by their employees, many of them patterned after the Hatch Act. Modifications to the Federal statute can't help but ultimately affect the protections now afforded state and local government employees.

We have recently lived through the effects of an erosion in the confidence of the public in all levels of government. That attitude has begun to turn around. Any legislation that impairs the neutrality of the civil service can only diminish the public's confidence. As Justice White noted in the case of *National Association of Letter Carriers* v. *United States Civil Service Commission*, "it is not only important that the government and its employees in fact avoid practicing political justice, it is also critical that they appear to the public to be avoiding it if confidence in the system of representative government is not to be eroded to a disastrous extent."[2]

IPMA's concern is that the proposed amendments to the Hatch Act will foster the appearance, if not actually create the possibility, that decisions made by career civil servants can and are being made for partisan political reasons. Such a perception would have a severely negative impact on the ability of career civil servants to carry out their responsibilities to any Administration and to the American public whom they serve.

SENIOR EXECUTIVES ASSOCIATION
Washington, DC, November 28, 1989

Hon. JOHN GLENN,
Chairman, Committee on Governmental Affairs, United States Senate,
Washington, DC.

In response to your letter of November 8, 1989, we are pleased to provide you with a clarification of the survey done by the Senior Executives Association in 1987.

During calendar year 1987, we had received a number of inquiries from our members about what the Associations position was on the proposed amendments to the Hatch Act being considered by the House of Representatives. Many of those inquiring had strong views either pro or con on the proposed amendments. In order to determine the overall position of the membership, the Board of Directors of SEA decided that a member survey would be the most appropriate vehicle. On October 27, 1987, we mailed to our membership of approximately 2200, a written survey specifically addressing the proposed Hatch Act amendments, and asking for the members' views. We asked that the survey be returned to SEA within 30 days. After six weeks, we tabulated the survey results.

From the standpoint of the Association, the survey results were very disappointing. We received a total of 480 responses (approximately 22% response rate) which was the least number ever received by the Association in response to a written survey. In the past, our response rates had always exceeded 50%. In addition, we felt that the responses were very ambivalent. While 356 (74%) of those responding opposed the Hatch Act amendments described in the survey, only 251 (52%) believed that the Association should oppose the amendments. To the question "Should SEA take no position on the bill?", 223 (46%) of those responding did not answer this question.

After considering the matter carefully, the Board of Directors or SEA decided that they should take no position on the proposed Hatch Act amendments, since the response rate was so low (22%), since those responding who recommended that SEA oppose the legislation comprised only 11% of the membership, and since it was so difficult to communicate to our members and to the remainder of the SES population the many alternatives being considered in the legislation.

As a result, the Association has never adopted an official position on the proposed Hatch Act changes. We have no current plans to take any position on this proposed legislation in the near future.

Attached is a copy of the survey results for your information. We appreciate the opportunity to clarify this matter for you and for the Committee.

Sincerely,

G. JERRY SHAW
General Counsel

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[2] 413 U.S. 565.

SENIOR EXECUTIVES ASSOCIATION
Washington, DC, April 28, 1993

Hon. JOHN GLENN,
Chairman, Committee on Governmental Affairs, United States Senate, Washington, DC.

We understand that the subject of the Senior Executives Association's survey of its members in 1987 concerning changes to the Hatch Act came up at the hearing yesterday. We are writing to again clarify the purpose of the survey and its results, and SEA's current position.

1. The survey was done in 1987, approximately six years ago.
2. SEA received the lowest response rate ever to any survey we have done (22%).
3. The survey results were very disappointing to the Association, because they produced no definitive position from the membership.
4. In addition to the low response rate, the responses themselves were very ambivalent, with a substantial number of the questions not answered.
5. Only approximately half of those surveyed believed that the Association should oppose the Hatch Act Amendments, and the remainder did not specify one way or the other.
6. The Association itself has not taken a position on the Hatch Act changes proposed, because of the ambivalence of its membership when surveyed in 1987.
7. The turnover in Association membership is approximately 10% per year. In addition, Association membership has grown from approximately 2200 in 1987 to nearly 3200 today. This would indicate that 60%-90% of the membership in the Association has changed since the survey was taken.
8. The Association concluded in our 1989 letter to you (see attached) that the survey was not valid for the purpose of the Association taking a position on the proposed Amendments to the Hatch Act. It has even less validity today, nearly four years later.
9. The Association takes no position on the proposed Amendments to the Hatch Act now being considered by your Committee.

We hope this will clarify the Association's position on this matter for your Committee. Thank you.

Sincerely,

G. JERRY SHAW
General Counsel

PREPARED STATEMENT OF DAVID H. ROSENBLOOM

Mr. Chairman and Members of the Committee:

I am pleased to respond to your invitation to present the National Academy of Public Administration's views on proposed changes to the Hatch Act, the law that governs Federal, and some state and local, employee participation in political campaigns and elections. My testimony today represents the views of our Panel on the Public Service and is similar to the statement provided to this committee, in 1988, by the late Joseph L. Fisher, then the chairman of the Academy's Board of Trustees, on H.R. 3400, the forerunner of the legislation currently under consideration.

The purpose of S. 185 is to ". . . restore to Federal civilian employees . . . their right to participate voluntarily, as private citizens, in the political process of the Nation, and to protect such employees from improper political solicitations." Mr. Chairman, we fully understand the very positive motivations of those who seek to broaden Federal employee opportunities to participate in our Nation's cherished processes of government.

Revisions to the Hatch Act contained in S. 185 would permit Federal employees to engage in a broader range of partisan political activities when they are not on duty. Existing prohibitions would continue, and penalties would be toughened for on-the-job partisan political activities, including the use of official influence or information for partisan purposes.

The Academy's Panel on the Public Service has considered this proposal carefully on numerous occasions and again reviewed this issue at a recent meeting. For reasons I will outline below, we continue to believe that the adverse consequences of permitting broader Federal employee participation in partisan campaigns and elections far outweigh the potential benefits.

Long History of Concern About Employee Political Activity

Political activity by Federal employees has been a matter of concern since the early days of the Republic. President Thomas Jefferson, shortly alter he was inaugurated, issued an executive order which called on Federal officers to refrain from attempting to influence the votes of others and from participating in "electioneering." Later presidents issued similar directives. For example, Rutherford B. Hayes issued an executive order in 1877 which stated that Federal employees should neither be required nor permitted to participate in political management.

President Garfield's assassination by a disappointed office seeker led to the passage of the Civil Service Act of 1883 which forbids: (1) coercion of Federal employees for political funds and service and (2) use of "official authority or influence to coerce the political action of any person or body." However, it was President Theodore Roosevelt who laid down prohibitions that were later incorporated in the Hatch Act. His Executive Order 642, dated June 3, 1907, not only prohibited certain Federal employees from using their official authority or influence to interfere with or affect the results of elections, but it also prohibited those in the competitive civil service from taking an active part in political management campaigns. The Hatch Act, passed in 1939, extended these prohibitions to all Federal employees, including those in the excepted service.

From time to time, these legislative limits on participation of Federal employees in the political process have been called an infringement on the constitutional freedoms of speech and assembly. That question was settled when the Supreme Court held in 1973 that it did not violate the constitutional rights of Federal employees to prohibit them from engaging in plainly identifiable acts of political management and political campaigning. *(U.S. Civil Service Commission* v. *National Association of Letter Carriers, AFL–CIO.)* However, this does not preclude changing the law. That is the purpose of the revisions contained in S. 185.

Striking the Proper Balance

On the fundamental issue of permitting Federal employees to engage, while off duty, in the full range of partisan political activity, any change must recognize the need to balance Federal employees' right to participate in the political life of this nation and the public's right to a competent, impartial, nonpartisan administration of the law. In this delicate balance, the reality and the perception are both vital considerations. The appearance of nonpartisanship in the execution of law is essential to maintaining public confidence in the administrative institutions of government.

Under current law, Federal employees may register and vote, assist in voter registration drives not limited to one party, express opinions about candidates and issues, participate in campaigns where none of the candidates represent a political party, contribute money to a political organization or attend a political fund-raising function, wear or display badges or stickers, attend political rallies and meetings, join a political club or party, sign nominating petitions, and campaign for or against referendum questions, constitutional amendments, and local ordinances. On the other hand, Federal employees may not run for public office in partisan elections, campaign for or against candidates in partisan elections, collect contributions or sell tickets to political fund raising functions, circulate nominating petitions, or hold office in political clubs or parties. We believe the existing system provides a reasonable balance.

Potential of Pressure on Employees

Whatever partisan political activity is permitted off duty would, for many, become the expected behavior. Those in the civil service would soon come to believe that better assignments, promotions, and bonuses depend in part on partisan political activity. Equally destructive of morale and motivation would be a growing concern that not being promoted or given a preferred assignment was due to engaging in political activity for the unsuccessful party or candidate or not participating at all. This is no way to attract and retain a high-quality civil service.

We believe that Federal employees' involvement in partisan political activities would erode citizen confidence in the impartial administration of laws. Many citizens would have a growing uneasiness about the objectivity of Federal employees who oppose them in partisan political campaigns and who then are involved in investigations or decisions that might affect them adversely. This could occur in numerous situations dealing with taxes, eligibility for individual and corporate benefits, compliance with regulatory requirements, and award for government contracts. Public trust in the administrative processes of government could be dangerously undermined.

Finally, there is the issue of changes in administration from one political party to the other. Civil service employees' participation in partisan political activities

would greatly increase the doubts of incoming administrations about the responsiveness of career civil servants who opposed them during the campaigns. Even under the existing law, it has been hard for many presidential appointees to shake such doubts, even though they were almost always unjustified. Partisan political activity by career civil servants could create insurmountable barriers of suspicion in many political-career relationships.

Some argue for less drastic changes in the Hatch Act, such as permitting Federal employees off-duty to engage in the full range of partisan political activity only in connection with partisan elections for local government offices. Others argue for changes in the Act that would permit a full range of off-the-job partisan political activity by those Federal employees whose duties do not include substantive responsibilities in any procurement, leasing, contracting, benefit, and employment activities. Aside from the extraordinary difficulty, if not impossibility, of making and enforcing these distinctions, it is unrealistic to expect such distinctions to permeate the public consciousness. Instead, the public may come to believe that all Federal employees may engage in partisan politics and that political partisanship diminishes impartiality in the execution of laws.

The Adverse Consequences Are Unacceptable

The adverse consequences of permitting civil service employees to go beyond the scope of present practices are simply so great as to make them unacceptable. Similarly, a situation which continues to discourage a large number of our citizens from lawful exercise of political rights is also unacceptable. Questions about interpretations of the Hatch Act need to be answered promptly and clearly so that Federal employees desiring to participate more fully in the political process can feel comfortable about doing so to the maximum extent now permitted.

Accordingly, the Academy's Panel on the Public Service opposes modifications to the Hatch Act that would broaden Federal employee participation in partisan political activities. Nonetheless, it is the sense of our panel that if the Congress does seek to allow broader participation for most Federal employees, certain categories of employees should remain under the current restrictions. These categories are: career senior executive servants and GM–13–15 employees. Such employees have high-level executive and managerial responsibilities to the American public. Broader partisan political activity on their part would erode the public's confidence in their neutrality and objective dedication to serving the public interest. We believe it would also put pressure, however subtly, on their subordinates to engage in similar partisan activity. The SES and GM categories are already well-established in personnel law and regulation and are treated different from other employees with regard to classification and pay. We do not believe that excluding them from broader partisan political participation would create definitional and administrative difficulties. We do believe it would be for the good of the Nation.

Mr. Chairman, this concludes my prepared statement. We would be pleased to respond to any questions you may have.

PREPARED STATEMENT OF BERNARD ROSEN

My statement on proposed revisions of the Hatch Act in S. 185 is based on my experience as a former Executive Director, Deputy Executive Director, and Regional Director of the United States Civil Service Commission, Director of Personnel for the United States Department of State, and long-time career employee in Washington and the field, of which 17 years were as a career executive in Democratic and Republican Administrations. Since leaving government, I have continued my deep interest in the Federal civil service in connection with my work as Distinguished Adjunct Professor in Residence at The American University and as a fellow of the National Academy of Public Administration.

Although the Supreme Court has ruled that prohibiting Federal employees from engaging in political management and campaigning does not violate their constitutional rights, I fully understand the very good intentions of Members of this Committee who wish to enlarge opportunities for Federal employees to participate in the political process. However, my experience with employees of many agencies at all grade levels, white collar and blue collar, and in field offices as well as Washington, convinces me that permitting Federal employees, off duty, to be actively involved in partisan politics would have such serious adverse consequences as to far outweigh the desirable benefits sought. Specifically, it would

1. undermine citizen confidence in the well-established non-partisan execution of our laws,

2. create great distrust between political appointees and career executives particularly when administrations change from one party to the other, and
3. generate employee uncertainty and suspicion that their off-duty political activity, or lack of it, plays a quiet but significant role in determining their assignments, training, promotions, and awards.

In all these matters, perception is reality. That these and other adverse consequences are widely perceived is evident in critical editorials published in 56 newspapers in 26 states following recent actions to revise the Hatch Act in the House of Representatives. In addition to the provisions in S. 185, the Bill passed by the House, H.R. 20, also permits Federal employees, off duty, to engage in fund raising for politically partisan purposes. This is a significant difference, but it is worth noting that none of the editorials identified it as the major reason for their condemnation of the action in the House. Almost all say the Senate should leave the Hatch Act alone. Here are the headlines on some of the editorials:

- The Maiming of a Good Law (*Rocky Mountain News*)
- Don't Unhatch Fed Workers—Diluting the Hatch Act Will Politicize the Civil Service (*Las Vegas Review Journal*)
- An Unwanted Escape Hatch, Keep Federal Civil Service Employees Clearly and Formally Above Politics (*Los Angeles Times*)
- Let's Keep the Hatch Act (*Augusta Chronicle*, Georgia)
- Don't Scrap the Hatch Act—Keep Partisan Politics out of the Federal Civil Service (*Des Moines Register*)
- Don't Wreck the Hatch Act—the Federal Law Protects Civil Servants and the Public (*Buffalo News*)
- The Hatch Act Works and Fixing It Would Be a Mistake (*Cincinnati Post)*

In expressing opposition to permitting Federal employees to engage, off duty, in the robust business of partisan politics, the editorials evidence strong concern that Federal employees will be subject to partisan political pressures as they exercise their vast powers. Among the powers exercised by Federal employees are explaining and enforcing laws and regulatory requirements dealing with taxes, benefits, government contracts, civil service jobs, and numerous other matters which impact on people every day in every walk of life. The tens of millions of people who are affected by the actions of Federal employees need to feel that there are no irrelevant considerations when these decisions are made. In such matters, trust is important. The active involvement of federal employees in partisan political campaigns will undermine confidence in the impartiality of the civil service work force. The *Des Moines Register* editorial said it this way: "The public is asked to believe that Federal workers can be fierce political partisans at night, then change into completely non-partisan civil servants by day. Hogwash."

Many people believe that limiting the political activity of Federal employees began with passage of the Hatch Act in 1939. In fact, it has a long history reaching back to President Thomas Jefferson who issued an Executive Order prohibiting "electioneering" by Federal officers. Similar action was taken by other presidents. Prohibitions on political activity by employees in the competitive civil service included in an Executive Order by President Theodore Roosevelt in 1907 became the heart of the Hatch Act, which also extended these prohibitions to employees in the excepted service. It is obvious from the editorials that across our country there is currently a genuine concern that the public interest will be served badly by weakening the prohibitions in the Hatch Act.

Critics of the current law charge that Federal workers do not have clear understanding of what they can and can not do and therefore "play it safe" by not engaging in political activities that are legal. Surely this can be solved, as progress has in fact been made, by improving the information to employees, and if necessary, clarifying the law without weakening it.

Although I believe strongly that the limits on political activity in the Hatch Act should not be changed for the reasons already stated, I recognize that some such changes may be inevitable because (A) on March 3, 1993, the House voted overwhelmingly for H.R. 20 to permit off-duty partisan political campaigning, etc., (B) the President supports the Bill, and (C) almost two-thirds of the Members of the Senate in the 101st Congress voted for a similar bill.

If Federal employees are to be permitted to campaign, etc. in partisan elections, I believe that the adverse consequences could be reduced by amending S. 185 *to prohibit supervisors, managers, and executives* from such activity. This is a clearly identifiable group. Continuing to *prohibit* partisan political activity by the almost 300,000 employees in supervisory, managerial, and executive positions, would make three significant improvements in the Bill:

First, our government would be able to give more credible assurance to the American people that decisions made within Federal agencies which affect their lives and fortunes will not be influenced by partisan political activity.

Second, any new administration replacing one from the other political party is far less likely to have doubts about the willingness and commitment of career executives in the bureaucracy to help the new political leadership in every legal way to achieve its goals.

And third, there would be no basis for civil service employees to assume that their supervisors will give them better assignments, promotions, and awards because of their partisan political activity.

There is precedent for excluding supervisory and management personnel when statutes give rights to Federal civilian employees. The Civil Service Reform Act of 1978 authorized all Federal employees to join unions, but supervisory and management personnel were prohibited from participating in the management of a labor organization or act as a representative of a labor organization. [5 USC Section 7120(e)] This provision has served the American people well by eliminating even the possible perception of a conflict of interest when there is a union-management issue. We have a parallel situation with regard to the Hatch Act.

If the Hatch Act is to be changed to increase the political rights of nonsupervisory Federal employees and Postal workers, it is reasonable to assume, that for many Federal employees, what is permitted will be viewed as expected. Expected or not, some Federal employees will enter the partisan political arena in a very public way with great vigor. To increase confidence that the laws will be applied properly, the American people would need to know that the Hatch Act prohibitions continue for supervisors, managers, and executives, and that they will be held accountable for the fair and impartial application of laws and agency policies. This in my opinion can help avoid an explosion of cynicism among Federal employees as well as the public with regard to fair and impartial execution of the laws.

Mr. Chairman, I hope my statement is helpful to the Committee as it considers this very important subject.

PUBLIC SERVICE RESEARCH COUNCIL
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Testimony of
David Denholm, President
Public Service Research Council
Senate Committee on Governmental Affairs
S. 185, The Hatch Act Destruction Bill of 1993
April 30, 1993

Mr. Chairman, members of the Committee, my name is David Denholm, I am the President of the Public Service Research Council, a national citizens lobby which was founded twenty years ago to protect the public interest against union special interests. We appreciate this opportunity to present testimony in opposition to S. 185, the bill which would destroy the Hatch Act's protections against a politicized bureaucracy and subject federal and postal workers to political exploitation.

Concern that federal workers could become political pawns is as old as the Republic. In 1801, President Thomas Jefferson issued an Executive Order stating:

> "The right of any officer to give his vote at elections as a qualified citizen is not meant to be restrained, nor, however given, shall it have any effect to his prejudice; but it is expected that he will not attempt to influence the votes of others nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution and his duties to it."

Similar restrictions were subsequently issued by Presidents William Henry Harrison in 1841, Rutherford B. Hayes in 1877, and Grover Cleveland in 1886.

Nevertheless, the spoils system remained standard operating procedure until the assassination of President Garfield by a disappointed office seeker spawned the Pendleton Act of 1883. This legislation, which created the Civil Service System and instituted merit principles for federal employment, prohibited the collection of campaign contributions in government buildings and restated an 1876 Congressional enactment restricting the solicitation or donation of political contributions to high ranking appointees.

By 1907, the political abuse of federal employees was again prevalent. President Theodore Roosevelt, a former Civil Service Commissioner, responded by issuing Executive Order 642 which stated: "Persons who by the provisions of these rules are in the competitive classified service, while retaining the right to vote as they please and to express privately their opinions on all political subjects, shall take no part in political management or in political campaigns."

By the 1930's, the political coercion of government workers had escalated to new levels. Great numbers of Americans had been forced by the depression to rely on federal programs such as the Works Progress Administration (WPA) for employment, and they were easy targets for unscrupulous political operatives.

Thomas Stokes, a reporter for the New York World Telegram, won a Pulitzer Prize for a series of articles detailing the plight of WPA workers in Kentucky who had been coerced into aiding the reelection effort of Senator Alban Barkley. An investigation by Senator Morris Sheppard's Committee on Privileges and Elections not only substantiated the charges raised by Stokes but also uncovered examples of similar coercion in several other states.

This resulted in the enactment, in 1939, of legislation introduced by Senator Carl Hatch (D-NM) which protected federal employees from coercion by limiting the types of political activity in which they may engage. The Hatch Act prohibits federal employees from using their position to influence the outcome of elections or coercing the political action of others and from taking an active part in partisan political campaigns. The act was modified in 1940 to extend its provisions to certain state and local government employees. It has also served as the impetus for enactment of "mini-Hatch Acts" by most states and many local governments.

There have been three major challenges to the Hatch Act before the Supreme Court; United Public Workers of America v. Mitchell 330 U.S. 75 (1947); Oklahoma v. U.S. Civil Service Commission, 330 U.S. 127 (1947); and most recently, National Association of Letter Carriers, AFL-CIO v. U.S. Civil Service Commission, 413 U.S. 548 (1973). The Oklahoma case questioned the section of the Hatch Act applicable to state and local government employees. The other two cases related to the restrictions on federal employees.

The most common challenge to the Hatch Act is that it is an unconstitutional infringement on individual rights, and its provisions are "over broad and fatally vague." The Court, in Mitchell, rejected these contentions and affirmed the right of Congress to limit the political activity of federal employees in this fashion.

Justice White, writing for the majority in Letter Carriers, stated: "We unhesitatingly reaffirm the Mitchell holding ... Our judgment is that neither the First Amendment nor any other provisions of the Constitution invalidates a law barring this kind of partisan political conduct by federal employees." The Court further held that the body of regulations and case law that had been developed since passage of the Hatch Act invalidated the argument that its provisions were over broad or vague.

The Court, in Oklahoma v. U.S. Civil Service Commission, upheld those sections of the Hatch Act applicable to state and local government employees, but the 1974 Campaign Reform Act removed these sections from the law. Most states, however, have passed legislation limiting the political activity of public employees. The constitutionality of such statutes was tested and upheld in Broadrick v. Oklahoma, 413 U.S. 601 (1973).

Legislation to revise or repeal the provisions of the Hatch Act has been introduced in every Congress since its passage. Most early efforts were attempts at outright repeal. More recently, the emphasis has been on narrowing the restrictions in the act. It has been in recent Congresses that significant weakening of the Hatch Act came closest to enactment.

Legislation to revise the Hatch Act was approved in 1976. It was vetoed by President Gerald Ford and the veto was upheld.

Passage of the Civil Service Reform Act in 1978 caused many members of Congress including Senator Abraham A. Ribicoff, who was the Chairman of the Senate Committee on Governmental Affairs to question the wisdom of Hatch Act revision. The Civil Service Reform Act stripped senior executives of many of their civil service protections and set up a system of rewards which made these government employees far more subject to political manipulation.

A report from the Controller General of the United States to Senator Ribicoff included the following observations about the impact of the Civil Service Reform Act on the question of revising the Hatch Act.

> Any safeguards established to protect Federal employees from coercion by management should also include some form of protection from outside groups. These groups may be even more capable of systematic coercion than management.
>
> The elimination of restrictions on political activity could very likely increase the potential for conflict of interest situations to develop. Problems of this type are not necessarily limited to the higher grade positions having substantial input into a decision. Any position that has responsibility for large Federal expenditures, even in small increments, may be susceptible to misusing their authority.

There is no doubt that the "outside groups" referred to in this report includes federal and postal unions. The legislation you are considering now does not address itself to these concerns. At the very least, the remaining prohibitions on political coercion should include union representatives along with supervisors.

In 1987 the House of Representatives approved legislation to revise the Hatch Act. There was a last minute attempt to

attach it to the Appropriations bill for the District of Columbia in the closing days of the Congress. This amendment was tabled on a voice vote on a motion by Senator William Proxmire (D-WI).

Legislation to revise the Hatch Act was approved by Congress in 1990. It was vetoed and the veto was sustained by the U.S Senate.

Pressure to change the Hatch Act emanates from federal and postal unions, who claim that the pressure comes from their members. There is reason to question the degree to which individual federal and postal employees desire to be "un-Hatched."

The Commission on Political Activity of Government Personnel conducted a survey of federal employees in 1968. Seventy-one percent responded negatively to the question, "Have you ever wanted to take part in particular kinds of political activities but didn't because you were a federal employee?" In addition, fifty-two percent felt that if more political activity by federal employees were allowed, it would have an effect on promotions and job assignments.

In a 1977 nationwide poll commissioned by the Public Service Research Council, sixty-five percent of all respondents favored retaining the Hatch Act as is. Among respondents who were public employees, fifty-three percent of the union members and fifty-nine percent of those not members of unions opposed changes in the law.

Congressman Frank Wolf who represents Virginia's 10th District conducted a constituent poll in 1983 in which sixty-six percent of the respondents opposed any change in the Hatch Act. It is estimated that approximately one-third of the voters in this district are federal employees, one of the highest such concentrations outside of the District of Columbia.

A survey of federal employees conducted by the Merit Systems Protection Board in 1989 found that only 32% wanted the Hatch Act liberalized.

It is not clear that unions can really reflect the interests of their members. During the 94th Congress, a representative of the National Federation of Federal Employees (NFFE), an independent federal employee union, testified that a poll of its members found 89% opposed to changing the Hatch Act and that its convention had voted unanimously against any changes.

In the 95th Congress, a representative of NFFE testified that the union's convention the previous year had voted in favor of modifying the Hatch Act.

According to the General Accounting Office, a 1976 survey by the American Postal Workers Union, which showed that its

members "overwhelmingly supported revision of the Hatch Act" was conducted by union officials at randomly selected union meetings.

Proponents and opponents of the act agree that federal employees often use the Hatch Act as a shield. In an American Enterprise Institute policy study entitled Hatch Act: A Civil Libertarian Defense, John R. Bolton wrote,

> "...the general counsel of the Civil Service Commission has observed that many federal employees read the Hatch Act very broadly in order to protect themselves from what they perceive to be political pressure. They are able to say 'I'm Hatched' even in circumstances to which the act may not apply, and by so doing ward off attempts to have them engage in political activity."

Historian Marjorie Fribourg acknowledged this tendency in a July 24, 1977, Washington Post article. She wrote,

> "When a civil servant says, 'I'm Hatched,' he is not complaining. He is protecting himself from political arm-twisting..."

Federal union officials are well aware of this. At a committee hearing on Hatch Act revision, an official of the American Federation of Government Employees, AFL-CIO, the largest federal employee union told the committee, "Some federal employees really hide behind the Hatch Act as a way to get out of participating." The union apparently believes that if the Hatch Act is revised, it can find ways to prevent federal employees from getting out of participating.

It appears then, that support for Hatch Act revision is centered primarily in those who stand to benefit most from the change - federal and postal unions and their allies in Congress. And, increased political power is the benefit to be realized.

As Bob Williams wrote in his December 18, 1978, Federal Times column:

> Hatch reform also would sharply expand union clout on Capitol Hill. Joe Vacca, NALC (National Association of Letter Carriers) president, for example, believes that until Hatch reform is achieved his union stands no chance of winning the right to strike and other legislative plums that are aimed at expanding labor power in the federal establishment.

Additional evidence of this is provided by events that occurred during the debate on legislation in the 95th Congress to weaken the Hatch Act.

During the floor action on May 17, 1977, Representative John Ashbrook (R-OH) proposed an amendment that reaffirmed the

federal worker's right to be free from political coercion. The last paragraph, however, contained a provision prohibiting the use of union dues for political purposes of any kind. Due to confusion or the late hour, the amendment carried 229-168, with 94 Democrats joining 135 Republicans in support.

Realizing what had happened, the Democratic leadership suspended action on the bill. When they reconvened on June 7, an amendment by Representative William Clay (D-MO) to nullify the controversial provision passed 266-139.

The experience with the Ashbrook amendment provides an interesting insight into the motivations of the bill's sponsors and supporters. The Ashbrook amendment was consistent with the stated intent of broadening the permissible political activity of federal employees. Only the political activities of federal unions were affected. Clearly, legislation which removed restrictions on individual political activity without a corresponding grant to the federal unions was not acceptable to the sponsors of Hatch Act revision.

Another MSPB study found that 75% of federal personnel specialists who thought that liberalizing the Hatch Act would have an effect on the merit system believed that effect would be negative.

The report to Congress on the Merit Systems Protection Board survey of Federal personnel specialists did not include any reference to the response to the question about the impact of liberalizing the Hatch Act. The Public Service Research Council obtained all of the data on this question and prepared a complete analysis of it. This analysis includes a breakdown of the response by several demographic characteristics. I am including a copy of a report on this analysis as part of this testimony. You will note that a much higher percentage of the more senior and more experienced personnel specialists believe that the impact of revising the Hatch Act would be negative.

While Hatch Act revision enjoys support from very narrow special interests representing federal and postal unions aided and abetted by the American Civil Liberties Union (ACLU) opponents of revision span the political spectrum and broadly represent the public interest.

From the outset, the editorial pages of the nation's newspapers have been guardians of the Hatch Act. Already in 1993, hundreds of newspapers, including most of the major ones, have editorialized against this legislation to revise the Hatch Act. I am including as part of my testimony copies of a representative sample of these editorials.

Hatch Act revision is opposed by Common Cause, the American Conservative Union, the Chamber of Commerce of the United States, the American Farm Bureau Federation, the National Right to Work Committee, the Alumni Association of the Federal

Executive Institute, the National Academy for Public Administration, the American Bar Association, the National Taxpayers Union, and, of course, even though this is a very partial list, by the Public Service Research Council.

The most commonly advanced argument for revising the Hatch Act is the charge that it makes federal employees "second-class citizens" by denying them rights granted to private sector employees and other members of society. This argument is rife with emotional appeal, which frequently degenerates into mere sloganeering, but it offers little to address the facts at hand.

The Supreme Court has, through three separate challenges, held that the act is not an unconstitutional abridgement of the First Amendment or other rights of federal employees. The Court has consistently upheld the right of Congress to regulate conduct it perceives to be contrary to the interest of the nation as a whole.

Justice White, in delivering the opinion of the majority in National Association of Letter Carriers v. U.S. Civil Service Commission, wrote:

> "...Our judgment is that neither the First Amendment nor any other provision of the Constitution invalidates a law barring this kind of partisan political conduct by federal employees.
>
> "Such decision on our part would do no more than confirm the judgment of history, a judgment made by this country over the last century that it is in the best interest of the country, indeed essential, that federal service should depend upon meritorious performance rather than political service, and that the political influence of federal employees on others and on the electoral process should be limited.
>
> "Although Congress is free to strike a different balance than it has, if it so chooses, we think the balance it has so far struck is sustainable by the obviously important interest sought to be served by the limitations on partisan political activities now contained in the Hatch Act."

The wisdom of such restrictions is recognized in other quarters. The United Nations Handbook of Civil Service Laws and Practices states that "the political neutrality of the civil service is a fundamental feature of multiparty democracy, and is essential for its efficient operation."

One problem with the Hatch Act is that it is vague and confusing. The Bush Administration made major strides to remove that confusion by compiling a short set of guidelines for political activity for federal and postal workers. This should eliminate the confusion. Many people feel these new regulations will make so-called "reform" unnecessary.

Proponents of weakening the Hatch Act also argue that the legislation has outlived its usefulness. They hold that the maturation of the Civil Service System along with other developments has made it unlikely that the abuse of the 1930's could be repeated today.

There is simply no evidence to support this contention, and many developments serve to contradict it. The federal work force has more than tripled in size since Senator Hatch introduced his legislation. Furthermore, the role of the federal government has grown to the point that it is now more involved in the daily lives of its citizens than at any other time in our history.

Much of that involvement stems not from laws enacted by Congress but from the interpretation and implementation of laws by agencies of the executive branch or from regulations issued by agencies in their quasi-legislative capacity. Bureaucrats, because of their position in the policy-making process, enjoy an ability to influence the actions of government not shared by their fellow citizens. The opportunity to engage fully in partisan political activity, in juxtaposition with their existing policy-making access, would provide federal employees with an unacceptably disproportionate influence over the course of government.

And, another factor has been added to the equation. Federal and postal unions are now a much more significant presence than they were in the 1983's. John R. Bolton wrote in The Hatch Act, A Civil Libertarian Defense:

> Indeed, the difference between coercion of an employee by a supervisor (the paradigm of 1939) and coercion of an employee by a union - which may include supervisors - (the paradigm of today) is that coercion by a union is far harder to resist. Moreover, it may well be that unions are far more capable of engaging in the systematic solicitation and intimidation of federal employees than a network of supervisors. Public employee unions were not of significant size when the Hatch Act was originally passed, but their advent has, if anything, only made the Hatch Act more important. Union protestations that their presence renders supervisor coercion less likely, however accurate, still provides no answer to the question of what renders union coercion less likely.

The courts have held that labor unions enjoy certain special privileges and powers not commonly extended to other individuals or organizations, and the NLRB has recognized a union's relatively unfettered right to discipline members in the manner it chooses. This is illustrated by the opinion of the Supreme Court in Old Dominion Branch No. 496, National Association of Letter Carriers, AFL-CIO v. Henry M. Austin, et al. Austin and several fellow employees who were not members of the union charged that they had been libeled in a union publication.

The Court denied their claim. Justice Marshall writing for the majority reaffirmed the precedent established in Linn v. Plant Guard Workers: "...Linn recognized that federal law gives a union license to use intemperate, abusive or insulting language without fear of restraint or penalty if it believes such rhetoric to be an effective means to make its point."

These arguments should also not be construed to mean that the potential for coercion by superiors is no longer likely. One need only recall the infamous Malek manual or the Nixon administration's attempts to turn the IRS loose on political enemies to realize the potential for this type of abuse is as real as ever.

An examination of the plight of "whistleblowers," federal employees who make public charges of government waste and corruption, provides valuable insight into the potential for coercion. The Whistleblowers: A Report on Federal Employees Who Disclose Acts of Governmental Waste, Abuse and Corruption, a Senate Governmental Affairs Committee report, not only spells out how employee coercion can occur, but make it clear that even the most stringent protections cannot prevent all forms of coercion.

The report states, "There is little doubt about management's ability to harass an employee." The actions that are taken against "whistleblowers" are the same as those that were and could again be directed at federal employees to secure their political loyalty. The report also says, "Informal harassment is used because it is difficult to prove and can take several different forms which vary in subtlety. The sources of day-to-day aggravation are difficult to trace and, it is improbable that this type of harassment will ever be checked." (Emphasis added)

Robert G. Vaughn in Restrictions on the Political Activities of Public Employees: The Hatch Act and Beyond provided additional insight into the difficulty of providing adequate protections. He wrote:

> Furthermore, employees subject to coercion often are not likely to complain because of the dangers of reprisal and the limited availability of relief. A study of the Federal Equal Employment Opportunity Program indicated that a large number of federal employees did not file discrimination complaints for fear of reprisal. A study of the reinstatement remedy granted by the National Labor Relations Board found not only that many workers refused reinstatement for fear of retaliation, but also that three-quarters of those reinstated left the company within two years because of 'bad company' treatment.

The situation is further complicated by the passage of the Civil Service Reform Act of 1978. The legislation sought to

improve efficiency by making the bureaucracy more responsive to the President and department heads. To accomplish this end, management's powers of discipline and discharge were strengthened. Institution of the Senior Executive Service and merit pay concepts made promotions and pay raises of middle and upper level managers contingent upon evaluation by their superiors, who are ultimately political appointees. This has greatly increased the potential for political coercion.

But, there is an even more important consideration. In addition to protecting the individual employee from political coercion, the Hatch Act serves to protect the general public from political intimidation by a partisan bureaucracy. The citizens of this nation have a right to federal programs and regulations whose administration and enforcement are free of political considerations or favoritism.

John Bolton, in his previously cited defense of the Hatch Act, summed up this point.

> "...Government workers have a right to be free from political coercion - particularly from any systematic solicitation by either their superior or their coworkers. Since the power to coerce derives in substantial amount from the power vested in government, the Hatch Act is, in effect, a case of government restraining itself. Nongovernmental employees have similar First Amendment rights - the right not to have their freedom to engage in political activity 'chilled' by political activists who also administer government programs and regulatory law-enforcement agencies.

And in his veto of 1990 legislation, President Bush asserted:

> "The Hatch Act has successfully insulated the Federal Service from the undue political influence that would destroy its essential political neutrality. It has been manifestly successful over the years in shielding civil servants, and the programs they administer, from political exploitation and abuse. The Hatch Act has upheld the integrity of the civil service by assuring that Federal employees are hired and promoted based upon their qualifications and not their political loyalties.
>
> "I am firmly convinced that any appreciable lessening of the current protections afforded to Federal civil servants by the Hatch Act will lead to the repoliticization of the civil service and of the programs it administers. We cannot afford, in the final decade of this century, to embark on a retreat into the very worst aspects of public administration from the last century."

The limitations on political activity imposed by the Hatch Act are constitutional. The Supreme Court has, on three separate occasions, affirmed this.

There is little evidence that the pressure to weaken the Hatch Act emanates from federal employees. The majority have consistently indicated a desire to remain "Hatched."

It appears that the desire to emasculate the Hatch Act rests with those who stand to gain increased political power - the postal and federal unions.

The Hatch Act is now more necessary than ever to protect federal employees from political coercion by their superiors or their unions. A review of the historical development of the Hatch Act confirms that the only truly effective protection for federal employees has been a prohibition of partisan political activity.

Furthermore, the Hatch Act is an invaluable protection in preventing a "chilling" of the political rights of the citizenry by a partisan bureaucracy.

President Ford in his veto of 1976 legislation to weaken the Hatch Act stated:

> "The public expects the government service will be provided in a neutral, nonpartisan fashion. This bill would produce the opposite result...
>
> "If the prohibitions against political campaigning were removed, we would be endangering the entire concept of employee independence and freedom from coercion which has been largely successful in preventing undue political influence in government programs or personnel management.
>
> "If this bill were to become law, I believe pressure would be brought to bear on federal employees in extremely subtle ways beyond the reach of any anti-coercion statute so that they would inevitably feel compelled to engage in partisan activity.
>
> "This would be bad for the employee, bad for the government and bad for the public..."

Mr. Chairman, this legislation you are considering, S. 185, would remove almost all of the Hatch Act's present restrictions on partisan political activity by federal and postal workers. The proponents of the bill assure you that you can remove these restrictions and keep the protections against coercion. What they fail to realize is that the prohibitions are the protections.

This legislation, by removing the Hatch Act's restrictions on partisan political activity by federal and postal workers would subject them to political pressure. It would result in the destruction of the merit system in federal employment and the repoliticization of the federal bureaucracy. We strongly urge you to vote against it.

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, DC

Mr. ROBERT M. TOBIAS, President,
The National Treasury Employees Union, Washington, DC.

DEAR MR. TOBIAS: Commissioner Goldberg has asked me to respond to your letter dated November 1, 1989, in which you request information regarding the extent to which Examination employees have discretion in choosing taxpayers for audit. For Fiscal Year 1989, approximately 65 percent of examined returns were selected from computer based sources using set mathematical formulas. Those include DIF and DIF related returns, training returns which are also selected using DIF formulas, Service Center and Information Returns Program (IRP) returns, and TCMP returns from which the DIF formulas are generated.

The remaining 35 percent of examined returns are screened for selection using objective predetermined criteria; however, the judgment and experience of the screener are also significant elements in the selection process. These sources are:

Local and Other Source—Returns selected by local decision in the districts, based on characteristics on the return indicating noncompliance; and returns not included in other categories. Examples are the Unreported Income Program; Information Gathering Projects; delinquent returns; information reports; other related returns picked up as a result of the examination of non-DIF individual, partnership, fiduciary and S-Corporation returns; claims; employee returns; referrals from Appeals, Collection, states and other U.S. agencies; etc.

Tax Shelters—Key cases identified by districts and related investor returns.

Fraud and Enforcement—Referrals from Criminal Investigation or Collection, informants claims or information document matching where gross inflation of deductions or credits or understatement of income is indicated when the return is screened. This category also includes the filing of multiple returns for the purpose of receiving refunds.

Abusive Protestor—Returns for taxpayers who claim taxes are illegal and/or violate their fifth amendment rights and/or claim excessive withholding allowances.

Coordinated Examination Program—Returns of large corporations.

There is some room for discretion in the selection of tax returns. However, there are safeguards in the form of Internal Revenue Manual (IRM) procedures and accountability to superiors to prevent abuse and conflict of interest and to ensure equitable treatment of taxpayers. Policy statement P–4–6 provides that "examiners will not examine or survey the returns of taxpayers with whom they have had a business or social relationship of a nature that might impair their impartiality and independence". Policy statement P–4–7 provides in part that examiners will "determine the correct amount of the tax with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers". IRM 4232, General Standards, bars Examination employees from examining returns where the taxpayer has significant personal financial transactions with the examiner or the examiner's relationship with the taxpayer might impair or appear to impair the examiner's partiality and independence.

Examiners have procedures for completing information reports if there is an indication a return should be examined. These information reports must be approved by the examiner's immediate supervisor and screened by the Chief, Planning and Special Programs. To secure a return for examination, it should be established on Examination's computerized system for inventory control of returns. If an examiner requests a return related to another return under examination or for reference or information, IRM 48(13)1, Text 212 requires that the reason for requesting the return be given and the request be approved by the manager. In addition, disclosure laws provide civil and criminal penalties for the misuse of taxpayer return information.

I hope this information will be helpful to you.

Sincerely yours,

DAVID G. BLATTNER

U.S. MERIT SYSTEMS PROTECTION BOARD
Washington, DC, April 28, 1993

Hon. John Glenn,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC

DEAR MR. CHAIRMAN: We were recently requested by Committee staff to provide additional information on a 1988 survey of Federal personnel specialists by the U.S. Merit Systems Protection Board on the issue of Hatch Act reform. The survey in question was sent in June 1988 to a sample of 5,507 Federal personnel specialists. The sample included both nonsupervisory and supervisory individuals at grades 11 and above in personnel or equal employment opportunity related occupations. The sample was drawn from a total population of 18,598 individuals meeting those criteria. Approximately 3,500 questionnaires were returned, representing a favorable 64 percent response rate.

Our survey included the question shown below regarding the impact of Hatch Act reform. The responses to that question are also listed.

> Question: In your opinion, how would modification of the Hatch Act to permit Federal employees greater opportunity for political activity affect the operation of the Merit System, in general?

Response Choice	Percent Responding (rounded[1])
It would have a positive effect on the work environment	12
It would have no effect on the work environment	32
It would have a negative effect on the work environment	36
Don't know/No basis to judge	21

[1] Totals do not equal 100 percent because of rounding.

In interpreting these results, one should note that the 21 percent responding "Don't know/no basis to judge" do not necessarily equate to "have no opinion." Therefore, they may not be considered as neutral. The responses of this one-fifth of the sample must be read at face value—they don't know what the effect would be, or they have no basis on which to offer an opinion.

As shown, therefore, just under one-third of the respondents believe that Hatch Act reform of the kind described by the survey question would have no effect (either negative or positive) on the work environment, and slightly better than one in ten believes that such change would have a positive effect. Similarly, slightly over one-third of the respondents believe that such change would have a negative effect on the work environment.

As these results demonstrate, the Federal personnel community is widely divided in its view of the effect Hatch Act reform would have on the operation of the Federal merit system. If the Committee would like any additional information on the Board's work in this area, please let us know.

Sincerely,

JOHN M. PALGUTA
Deputy Director, Policy and Evaluation

COMMON CAUSE,
Washington, DC, March 8, 1993.

DEAR SENATOR: Legislation to amend the Hatch Act, which for more than 50 years has protected Federal employees from inappropriate political pressures, is expected to be considered by the Senate later this spring. Common Cause strongly urges you to oppose this legislation.

S. 185, Hatch Act Reform Amendments of 1993, makes basic changes in the current Hatch Act restrictions on partisan political activity by Federal workers, opening the door to implicit coercion and abandoning the fundamental concept of an unpoliticized civil service.

S. 185 will repeal Hatch Act protections and for the first time in more than 50 years allow Federal civil service and postal employees to actively participate in partisan political activity. It would permit Federal workers to serve as officers of a political party, to raise partisan campaign contributions from their colleagues, to manage campaigns, and to administer political action committees (PACs). The only restraint is that the partisan activity would have to occur in off-hours.

Repeal of the Hatch Act's basic protections, as proposed in S. 185, will increase the potential for widespread abuse and open the way for implicit coercion against which there can be no real protection. With basic restrictions on partisan activity repealed, no procedural or other safeguards will be sufficient to protect against subtle forms of political favoritism or coercion of Federal workers.

It is important to recognize that under the current Hatch Act, Federal workers already are permitted to engage in certain political activities. For example, they may make political contributions to candidates, serve as rank-and-file members of political parties, and engage in nonpartisan political activities. It is only the most active levels of partisan participation from which they are currently barred. In drawing this line, we believe that the current Hatch Act strikes an appropriate balance between the Federal worker's ability to participate in political activities and the public's right to fair and impartial administration of government.

Common Cause recognizes that the current regulations governing administration of the Hatch Act are complicated. There may be ways to clarify and simplify for workers the degree of participation they are permitted under the Hatch Act without lifting the basic restrictions on partisan activity. We urge the Senate to instead explore this possibility.

The Hatch Act was designed to ensure that the Federal Government is administered in a fair and impartial manner. We agree with the U.S. Supreme Court which stated, in upholding the constitutionality of the Act, that "it is in the best interest of the country, indeed essential, that Federal service should depend upon meritorious performance rather than political service."

Common Cause strongly believes this important integrity-in-government measure should not be repealed. We urge you to oppose S. 185 and other proposals that would repeal necessary prohibitions on partisan political activity by Federal employees.

Sincerely yours,

FRED WERTHEIMER,
President

PUBLIC SERVICE RESEARCH COUNCIL
SUITE 230 1761 BUSINESS CENTER DRIVE RESTON, VIRGINIA 22090 703) 438-3966

March 1993

Special Report: The Hatch Act and the Merit System

What affect would revising the Hatch Act have on the federal Merit System? The Opinion of Federal Personnel Officials

In June of 1988 the Merit Systems Protection Board (MSPB), an independent agency of the Federal Government conducted a survey of Federal personnel specialists.

The survey was sent to a stratified sample of 5,507 personnel specialists. More than 3,500 replies were received.

The results of that survey were published by the MSPB in November 1989 in Federal Personnel Management Since Civil Service Reform: A Survey of Federal Personnel Officials.

The survey contained several questions asking whether these specialists had personally observed prohibited practices involving political solicitations, pressure or favoritism. The response to these questions, which were published, generally indicate that the Federal Civil Service is free of partisan political influence.

The survey also contained a question asking the opinion of these specialists about the impact on the Merit System of revising the Hatch Act to allow greater political activity by federal civil servants.

Three out of four personnel specialists who felt that revising the Hatch Act would have an affect on the Merit System felt that the effect would be negative.

Among personnel specialists who are members of the Senior Executive Service, 70% of the total, more than 95% of those who felt that it would have an effect, felt that the effect would be negative.

The response to this question was not published in the report.

Since 1987 legislation to revise the Hatch Act has been a very active issue in Congress. On March 3, 1993 the House of Representatives apporved a bill to revise the Hatch Act by a vote of 333 to 86. The Senate Governmental Affairs Committee is planning hearings on the legislation in the near future.

The opinion of Federal personnel specialists on a question which can so directly impact on the integrity of the Merit System ought to be of great interest to Congress.

The following information is provided to fill the void in the MSPB's report.

What affect would revising the Hatch Act have on the federal Merit System? The Opinion of Federal Personnel Officials

Here is the question as it appeared in the survey and the results obtained from the Merit Systems Protection Board.

In your opinion, how would modification of the Hatch Act to permit Federal employees greater opportunity for political activity affect the operation of the Merit System, in general?

It would have a positive effect on the work environment.	11.5%
It would have no effect on the work environment.	32.3%
It would have a negative effect on the work environment.	**35.5%**
Don't know/No basis to judge.	20.7%

Demographics of Response

The survey also contained several demographic questions about the respondents.

Here is a breakdown of some of the demographic questions.

In your opinion, how would modification of the Hatch Act to permit Federal employees greater opportunity for political activity affect the operation of the Merit System, in general?

How long have you worked in the Federal personnel field?

	Positive Effect	No Effect	Negative Effect	Don't Know
Less than 1 year	6.9%	29.1%	28.9%	35.1%
1 to less than 2 years	15.6%	23.0%	37.4%	24.0%
2 to less than 10 years	12.8%	32.0%	30.9%	24.3%
10 to less than 20 years	12.1%	33.6%	35.3%	19.0%
20 to less than 30 years	7.8%	31.4%	44.0%	16.8%
30 years or more	13.7%	28.8%	27.1%	30.4%
Total	11.4%	32.4%	35.7%	20.6%

In your opinion, how would modification of the Hatch Act to permit Federal employees greater opportunity for political activity affect the operation of the Merit System, in general?

What is your current grade level?

	Positive Effect	No Effect	Negative Effect	Don't Know
11	9.8%	32.1%	28.8%	29.4%
12	13.1%	32.5%	33.8%	20.6%
13	11.8%	33.2%	38.9%	16.0%
14	11.5%	31.7%	46.0%	10.9%
15 (or equivalent)	7.0%	28.8%	56.5%	7.7%
16 (or equivalent)*				
SES	3.5%	21.8%	70.4%	4.2%
Total	11.4%	32.3%	35.5%	20.7%

* Sample too small for analysis

In your opinion, how would modification of the Hatch Act to permit Federal employees greater opportunity for political activity affect the operation of the Merit System, in general?

Are you?

	Positive Effect	No Effect	Negative Effect	Don't Know
Male	13.1%	35.4%	39.2%	12.3%
Female	10.0%	29.4%	32.1%	28.5%
Total	11.5%	32.3%	35.5%	20.7%

In your opinion, how would modification of the Hatch Act to permit Federal employees greater opportunity for political activity affect the operation of the Merit System, in general?

Where is your job located?

	Positive Effect	No Effect	Negative Effect	Don't Know
Within Washington, D.C., metropolitan area	10.3%	25.2%	44.1%	20.4%
Outside Washington, D.C., metropolitan area	11.9%	34.9%	32.3%	20.8%
Total	11.5%	32.3%	35.6%	20.7%

The Hatch Act is doing a good job of preventing a political bureaucracy.

Responses to other questions in this survey indicate that the Hatch Act is effectively preventing the politicization of the federal bureaucracy.

In all but one instance, more than 98% reported no problems. In response to a question about appointment to competitive service based on political affiliation, however, more than 7% said that they had observed this at least once within the last 12 months.

The survey asked whether, during the past 12 months any of the following practices had been personally observed in the organization of the respondent.

"An employee being pressured to contribute to a political campaign?"

Yes .7%
No 99.3%

"An employee being pressured to participate in partisan political activity?"

Yes .4%
No 99.6%

"An employee actively seeking partisan political office or raising funds on behalf of a partisan political candidate?"

Yes 1.9%
No 98.1%

"A career employee being pressured to resign, transfer, or accept reassignment because of his/her political affiliation?"

Yes 1.9%
No 98.1%

"An appointment to the competitive service made as a result of political party affiliation?"

Yes 7.2%
No 92.8%

The Opinion of Federal Employees on Participation in Partisan Political Activity

In the 1989 Merit Principles Survey of federal employees conducted by the Merit Systems Protection Board there was a question about political activity.

The survey was sent to a representative sample of 21,454 federal employees. Of these 15,939, over 74%, replied.

Here is the question as it appeared in the survey and the results obtained from the Merit Systems Protection Board.

I would like to be able legally to be more active in partisan political activities.

Strongly agree	12.9%
Agree	18.9%
Neither agree or disagree	40.9%
Disagree	19.0%
Strongly disagree	8.2%

Demographics of Response

The survey also contained several demographic questions about the respondents.

Pay Grade:

I would like to be able legally to be more active in partisan political activities.

What is your present pay grade?

	Strongly Agree	Agree	Neither	Disagree	Strongly Disagree
GS 1-4	12.0%	14.6%	45.5%	22.1%	5.7%
GS 5-8	10.9%	15.7%	46.4%	19.5%	7.5%
GS 9-12	16.0%	18.7%	40.2%	17.6%	7.5%
GS 13-15	13.1%	23.5%	34.5%	18.6%	10.3%
GM 13-15	12.4%	20.7%	32.7%	20.9%	13.3%
GS 16-18	10.7%	15.7%	23.7%	23.2%	26.8%
ES 1-4	8.4%	14.7%	25.9%	24.8%	26.2%
ES 5-6	8.4%	13.6%	19.3%	27.6%	31.0%

Age:

I would like to be able legally to be more active in partisan political activities.

What is your age?

	Strongly Agree	Agree	Neither	Disagree	Strongly Disagree
Under 20			56.7%	21.1%	22.2%
20-29	11.0%	15.1%	50.6%	15.7%	7.6%
30-39	12.4%	20.6%	43.8%	16.4%	6.8%
40-49	14.7%	20.5%	37.6%	18.8%	8.4%
50-54	11.6%	16.1%	38.1%	24.6%	9.6%
55-59	12.7%	15.9%	36.4%	23.5%	11.5%
60-64	11.6%	19.4%	40.5%	21.1%	7.4%
65 and over	10.4%	18.5%	38.9%	22.1%	10.3%

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Other Evidence of Federal Employee Opinion

The proponents of revising the Hatch Act have attempted to use the response to this question to indicate that federal workers want the Hatch Act revised.

This claim fails to put the question in context. In 1968 the Commission on Political Activity of Government Personnel conducted a survey of federal employees in which it was asked.

> **Have you ever wanted to take part in particular kinds of political activities but didn't because you were a federal employee?**

Seventy-one percent responded negatively to this question. This is very comparable to the sixty-nine percent who either don't want to be more active in partisan politics or expressed no opinion in the 1989 MSPB survey.

The 1968 survey also included a question that sheds more light on this question. In the 1968 survey, fifty-two percent indicated that. if more political activity were allowed it would have an effect on promotions and job assignments.

What the 1989 MSPB survey fails to do is to put the question in the perspective of the value federal workers put upon the Hatch Acts protections against politics having an impact on their employment.

In May 1988 the National Journal reported the results of a survey of Government Executives in which there was a question which asked:

> **Should the Hatch Act be amend to permit federal workers to run for office and manage and raise money for campaigns on their own time?**

Of the 3607 total replys, 3255 were federal government employees. Fully 60% of these opposed such revision of the Hatch Act.

Yes	**39.4%**
No	**60.6%**

There is no evidence to suggest that the value put on these protections has changed since 1968.

PSRC CLIPBOOK

Hatch Act Editorials

1993

1761 Business Center Drive, Suite #230 Reston, Virginia 22090

Index

THE WALL STREET JOURNAL FRIDAY, FEBRUARY 19, 1993

REVIEW & OUTLOOK

Hatch Not Hacks

One of President Clinton's few real spending cuts is his pledge to reduce the federal work force through attrition by 100,000 over four years. But he is unlikely to accomplish that if he goes along with an effort by Congress to destroy the Hatch Act, which limits the political activity of federal workers. Such a move would dramatically increase the power of public employee unions and make it less likely that Congress would ever vote to streamline or reform the bureaucracy.

The Hatch Act, named after Democratic Senator Carl Hatch of New Mexico, was passed in 1939 to tighten longstanding protections against a politicized federal work force. A Pulitzer Prize-winning series had documented how New Deal workers in Kentucky and other states had been coerced into supporting political incumbents.

Since its enactment, Hatch has been challenged three times before the Supreme Court on the grounds it infringes on the rights of workers. Each time it has been upheld. In 1973, Justice Byron White, the only Democratic appointee now on the court, wrote in an opinion that "it is in the best interest of the country, indeed essential, that . . . the political influence of federal employees on others and on the political process should be limited."

Frustrated by the courts, federal employee unions have time and again tried to modify the Hatch Act. Joe Vacca, the president of the National Association of Letter Carriers, has said that federal employees will never win the right to strike until Hatch is changed. In 1975, President Ford vetoed a Hatch Act repeal. In 1990, President Bush did the same thing and the Senate narrowly upheld his veto.

Last year, Bill Clinton said he would support some changes in the Hatch Act but stopped short of calling for its repeal. Public employee unions are betting he will be unwilling to veto whatever bill passes Congress. A bill to gut the Hatch Act is moving through Congress at warp speed and has already been voted out of committee. It may reach the House floor as early as next Tuesday.

Ironically, there is precious little evidence that federal workers themselves want changes in the Hatch Act. A 1989 survey of federal employees by the Merit Systems Protection Board found that only 32% wanted the act weakened. There are sound reasons for this attitude. "When a civil servant says, 'I'm Hatched,' he is not complaining," says historian Marjorie Fribourg. "He is protecting himself from political arm-twisting." Indeed, one federal employee union official groused in 1990 that "some federal employees really hide behind the Hatch Act as a way to get out of participating" in politics.

Groups such as Common Cause oppose curbing the Hatch Act, because they recognize it is the only way to avoid turning federal unions into full-fledged partisan political machines. Three union presidents were suspended from their federal jobs for 60 days under Hatch for openly backing Walter Mondale in 1984.

This country replaced the spoils system with a civil service more than 100 years ago. That system certainly has its problems, but at least its employees don't openly play politics. Bill Clinton would be foolish to allow the civil service to become a giant lobby for its own self-interest. But should he cave in and sign a bill gutting the Hatch Act, he should have the honesty to rename it the Hack Act, because that is the direction a politicized civil service will inevitably take.

THE CHRISTIAN SCIENCE MONITOR

MA-26 BOSTON, MA
D. 104 078

MAR 11 1993
BURRELLE'S

Go Slow on Voting Act

IF you work for the federal government, should you be allowed to participate in political activity at all levels?

For the last 53 years federal employees have been barred from certain political activities. Like all citizens, they have the right to vote, belong to a political party, and contribute to political campaigns.

But they cannot, under a durable, 53-year-old law – the Hatch Act – otherwise participate in politics at the national level. The act, named for its originator, Sen. Carl Hatch (D) of New Mexico, has proscribed electioneering by US government employees at the state and federal levels.

This undemocratic but not necessarily unfair policy bars federal employees from seeking state or federal office – except for nonpartisan state offices.

In recent times there have been three attempts to liberalize the act – in 1975, 1990, and now, 1993; the first attempt was vetoed by Republican President Gerald Ford, the second by George Bush, also Republican.

Now it appears that a similar bill will be sent to Democratic President Clinton. He says he will sign a bill very similar to the one Mr. Bush rejected.

However, this is not necessarily a partisan matter. The 1990 "reform" bill was passed in the House, 333-86. Breaking the House vote down another way, 247 Democrats, 85 Republicans, and one independent said yes; two Democrats and 84 Republicans said no.

The proposed new law would continue to bar federal and postal employees from running for statewide or federal offices. But federal employees would be permitted to run for both partisan and nonpartisan local offices, and nonpartisan state offices.

Members of the Federal Election Commission, which oversees the conduct of national elections, have been granted their request not to be included, in order to safeguard their neutrality.

Sen. John Glenn (D) of Ohio, chairman of the Government Affairs Committee, authored and submitted an alternative bill in the last session and will reintroduce it in the current session, according to a member of his staff.

The Glenn bill retains all the Hatch Act prohibitions against government employees using their jobs to influence other workers, with criminal penalties for violations.

Americans should carefully consider the proposed revisions of the Hatch Act, which has served the body politic well for five decades.

Bush may well have been right when he said that revising the Hatch Act "would inevitably lead to repoliticizing" of the government bureaucracy.

BIRMINGHAM NEWS

BIRMINGHAM, AL
DAILY 162,962

FRIDAY
MAR 26 1993

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Axing Hatch

EDITORIAL

In a sheriff's race in a rural Alabama county, the incumbent came in second. Still, with three candidates running and no one getting a clear majority, he would be in the runoff.

Between the primary election and that runoff, lo a new record may have been established in number of new voters registered by the sheriff's friend, the county registrar. The sheriff won the runoff handily.

That true story came to mind this week looking over a Democrat-pushed bill in the Senate to revise the federal Hatch Act.

The act forbids federal employees from engaging in most forms of partisan politics, including managing, fund-raising or working in federal campaigns.

It was enacted in 1939 to prevent the Roosevelt administration from pressuring federal workers into working on political campaigns.

The threat that the gargantuan federal work force could be pressured toward working for the party in power still exists. It will not vanish simply because those who want to dramatically alter the act talk about federal workers' rights.

As Fred Wertheimer, president of the citizens' lobby Common Cause, wrote to Congress last month: "With basic restrictions on partisan activity repealed, no procedural or other safeguards exist that will be sufficient to protect against subtle forms of political favoritism or coercion of federal employees."

Those of a cynical bent might suspect that the move to alter the Hatch Act has far less to do with ending injustices, and much more to do with the fact that Bill Clinton, in a three-person race, got only 43 percent of the vote in 1992.

Lo, some of the first things Democrats looking to 1996 began pushing when Congress began its session were a motor-voter bill, to help register many new voters who most believe would likely vote Democratic, and revising the Hatch Act.

Which party would the federal workers be most likely to help should the Hatch Act go? A survey by *Congressional Quarterly* found that in the 1990 and 1992 election cycles, the 21 PACs sponsored by federal workers gave $947,000 to Republican candidates, but $7.4 million to Democrats.

The Hatch Act isn't broken. It doesn't need fixing.

A12 Thursday, March 4, 1993 EDITORIAL PAGE
THE ARIZONA REPUBLIC

HATCH ACT 'REFORM'

Politics at work

IF the proposed reform of the federal Hatch Act, now on the congressional fast track, is the kind of change to be expected from Bill Clinton's Washington, Americans can be excused if they yearn for the good old days of gridlock.

The Hatch Act, for those rusty on their poly-sci, was enacted more than a half-century ago to protect the public and government workers from a politicized federal bureaucracy. The rapid expansion of the New Deal had been accompanied by an exponential growth of the federal work force, and political appointees were making concerted efforts to compel federal workers into actively supporting incumbent politicians and their programs.

Since its adoption, the Hatch Act has worked pretty much as intended and continues to do so. It has insulated the bureaucracy and government workers from the ravages of a political spoils system, simultaneously keeping the public from being overwhelmed by the self-interest of highly partisan public servants.

In exchange for accepting modest and prudent restrictions on certain types of political activity, federal workers won protection from a civil service system that goes to great lengths to provide a measure of job security uncommon in the private sector. The act prohibits most federal employees from active participation in political campaigns, running for office or soliciting political donations from fellow workers or the public, though they may make voluntary contributions to political causes and candidates.

According to several recent surveys, most rank-and-file federal workers have scant interest in modifying the Hatch Act. Nonetheless, leaders of several public employee unions, including the powerful National Association of Letter Carriers, want all political restrictions removed. Democrats in Congress and some within the Clinton administration say they are ready to oblige.

The potential for mischief should be obvious. As Supreme Court Justice Byron White pointed out some years back when the Hatch Act restrictions were unsuccessfully challenged: "It is in the best interests of the country, indeed essential, that . . . the political influence of federal employees on others and on the political process should be limited."

Joe Vacca, president of the Letters Carriers union, has a different opinion. Until the Hatch Act is changed, he says, federal employees will never win the right to strike.

Other backers of Hatch Act "reform" include all the usual suspects — special interest groups and supporters of the leviathan state in and out of Congress. They fairly smack their lips at the thought of enlisting the 3.1 million-strong federal work force in the endless campaign to confiscate whatever tax dollars Washington allows the private sector to retain for its own use.

Even Common Cause, the liberal lobby, warns that the proposed change "opens the door to implicit coercion and abandons the fundamental concept of an unpoliticized civil service." Considering the heavy price Americans pay to fund the federal bureaucracy, the least they have a right to expect are public employees who serve the public, not narrow partisan interests.

LOS ANGELES TIMES

LOS ANGELES, CA
DAILY

WEDNESDAY
MAR 3 1993

BURRELLE'S

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An Unwanted Escape Hatch

Keep federal Civil Service employees clearly and formally above politics

Federal employees, like all Americans, have the right to vote, to belong to a political party and to make monetary contributions to candidates. For 53 years, however, federal employees have been wisely barred from further political activity. They may not serve as officers in a political party or manage political campaigns or work as volunteers in a candidate's campaign office. They may not solicit contributions from others for a candidate. And, not least in importance, they may not themselves run for elected office.

These restrictions have been the law of the land since 1939 when the Hatch Act, named for Sen. Carl Hatch (D-N.M.), was passed.

Many federal employees have welcomed the prohibitions. The act excuses them from "voluntary" political activity that, given their vulnerability to actions by elected officials, might easily be coerced. The law also preserves public respect for the Civil Service by keeping it clearly and formally above politics.

But opposition to the Hatch Act has never subsided. It has been thrice challenged, and thrice upheld, before the Supreme Court. In 1975 and 1990, Congress passed—and Presidents Gerald R. Ford and George Bush vetoed—bills for its repeal.

Behind the challenges have been federal employee unions, notably the National Assn. of Letter Carriers, which have used their political influence with Democratic legislators against the Hatch Act.

A great many federal employees have been Democrats, and so Democratic legislators, the merits of the case aside, have a partisan reason to be sympathetic.

Minority group members are disproportionately numerous among federal employees as well, and one among the arguments for repealing the Hatch Act has been that it reduces minority political power. Broadly speaking, the federal employees' right to an irreducible minimum of political activity does need to be balanced with the taxpayers' right to be preserved from, in effect, funding their own employees' lobbying.

A new bill to revise the Hatch Act, currently before Congress, would destroy that balance, going so far as to permit employees of the Federal Election Commission, which monitors enforcement of election laws, to work in electoral campaigns.

Refinements of the act may well be possible, but any proposed changes should be scrutinized skeptically. This is a law that has served the public good for half a century. Repealing it or even seriously weakening it should be out of the question.

FRESNO BEE

FRESNO, CA
DAILY 145,169

THURSDAY
MAR 18 1993

Hatch Act revisited

■ Expanding the political rights of federal workers makes sense, but the legislation now being considered goes too far.

EDITORIAL

The Hatch Act, enacted in 1939 to guard against a political spoils system in federal employment, denies federal workers certain political rights that most other citizens take for granted. The act needs to be liberalized. Unfortunately, the bill passed overwhelmingly by the House earlier this month goes too far.

In its current form, HR 20, the House Hatch Act revision would allow federal employees to run for local partisan offices. In most cases that seems reasonable. A postal clerk or a NASA engineer should be free to run for school board or City Council in communities where those offices are partisan. Under current rules they can neither run for such offices nor actively campaign for local candidates they support.

But the reform proposal also permits federal workers to solicit partisan campaign funds from fellow workers and private citizens, to manage statewide partisan political campaigns and to become officers in political parties.

These are activities that, in the words of Common Cause, the campaign reform organization, "can lead to subtle forms of political favoritism or coercion of federal workers" — and in some instances, it may not even be so subtle. No procedural safeguards have ever been devised that can protect a worker who fears his job promotion rests on his willingness to walk precincts or make campaign contributions to the public employee union's endorsed candidate.

Congress and the president should be clear on one thing: It's principally public employee unions, not federal workers, who are clamoring for Hatch Act changes. A 1989 survey of federal employees found that only 34 percent actually favored Hatch Act reform. But for years, their union leaders, who already exercise considerable political clout through their PAC contributions and political endorsements, have lobbied strongly for this legislation.

At local, state and federal levels, public employee unions have already built powerful political machines that exercise enormous power. The Hatch Act revisions contained in HR 20 will expand the power of federal unions to influence elections and legislation and to coerce political compliance from their members. They've already got enough clout.

LOVELAND DAILY
REPORTER-HERALD

LOVELAND, CO
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MAR 10 1993

BURRELLE'S

Who gains from destruction of Hatch?

EDITORIAL

Congress would be foolhardy to destroy the Hatch Act. Yet the U.S. House has already acted to diminish its effectiveness, and the Senate may act before the end of March. Its fate in the White House is uncertain.

Congress passed the Hatch Act in 1939 to restrict the political activities of government employees. Political appointees in the Works Progress Administration had coerced WPA workers to contribute to specific candidates as a means to perpetuate the agency.

Most federal workers today see no reason to change the law. The most recent survey shows that Hatch Act changes have support among only 30 percent of federal workers.

Federal unions, however, are salivating at the prospect of a diluted Hatch Act. Unions, with the ability to harness huge numbers of federal workers into political activity on behalf of the union, would have tremendous clout. Imagine trying to reform the federal bureaucracy — as President Clinton wants to do — with politically charged public employees to contend with.

In addition to protecting federal employees from improper political arm twisting, the Hatch Act serves to protect average citizens. Consider the effect on the citizen who is audited by day by the IRS, and approached during nonworking hours by the same IRS agent for a political contribution. It's not legal now, but it would be under the House revisions.

Or consider the plight of groups of citizens petitioning a government official for relief only to find themselves on the quid pro quo mailing list of the official's favorite political cause. Subtle pressure, yet legal.

Changing a law that has protected citizens and government workers for 54 years from improper political arm-twisting would seriously diminish the ability of Congress and the president to govern.

Rocky Mountain News
(Denver, CO)

March 7, 1993

BURRELLE'S

The maiming of a good law

THE ISSUE:
Hatch Act
faces overhaul

OUR VIEW:
A bad move

The venerable Hatch Act — the 1939 law that keeps partisan politics from infesting the federal work force — is about to get overhauled. Believe it. The House voted 333-86 to remove many Hatch restraints, half the Republicans concurring with all the Democrats. The Senate is primed to follow suit. President Clinton favors revision. Yet the odds are great that the public will ultimately suffer.

At the gut level, proponents of changing Hatch make an attractive argument, namely that federal workers, like other Americans, should be able to engage freely in party politics on their own time.

Yes. But the question is whether individuals should be required to waive such liberties when they accept employment in the civil service — a public trust that ought to be free from even perceptions of partisan slant. We believe they should.

Under the just-passed House bill, civil service and postal employees could run for election to local office, manage political campaigns at all levels and raise campaign money. Again, all of this activity would be banned in the work place.

Yet this proviso seems insufficient. Could the GS-7 who worked his heart out for Party X during evenings and weekends faithfully execute the policies of a president from Party Y? Or would partisan loyalty tempt sabotage of those policies? Would federal workers, their unions empowered by a surge of activism, focus on job performance — or on pay and perks?

These questions may not disturb the president and most Congress members. But we bet they disturb millions of Americans, who have been well served by the Hatch Act's obligatory nonpartisanship.

DURANGO HERALD
DURANGO, CO
DAILY 7,232
WEDNESDAY
MAR 10 1993
BURRELLE'S

Don't weaken the Hatch Act

The Hatch Act, when passed by Congress in 1939, was designed to protect civil servants, whose numbers were rapidly increasing under FDR's New Deal, from political interference.

It has worked well, by and large.

Under the act, federal employees are prohibited from partisan political activity. In turn, they have the protection of civil service so that when administrations change, their jobs remain secure.

Today, in the name of free speech, there is a move in Congress to weaken the Hatch Act. Proponents of H.R. 20, designed to amend the act, say that it limits the rights of federal employees. They should be able to run for office, solicit political contributions and, in general, behave as private citizens do politically, the argument goes.

"Wait a minute," say opponents of the proposed change, "You want a fellow working for the IRS auditing your tax return coming over in the evening asking for a campaign contribution for one of his buddies in the service?"

It's an argument worthy of thought.

Fear of a politicized body of civil servants has existed from the beginning of the republic.

Thomas Jefferson opposed electioneering by federal workers. He said it was "inconsistent with the Constitution."

Hatch has been challenged three times before the Supreme Court since its passage.

That came about because in Depression-ridden Kentucky a number of federal employees were pressured to support, financially and otherwise, the re-election bid of a U. S. senator. After a series of news stories told of the coercion and fraud, Congress acted.

Surveys of federal employees show that the overwhelming majority like the protection of the Hatch act. Most belong, however, to unions and union leadership wants the partisan advantage.

President Clinton has said he wants to reduce the federal work force through attrition by 100,000 over four years. He will never accomplish that goal, nor will any other president, if the Hatch Act is weakened and the public employees unions become political machines.

Any belief in a bureaucrat as a public servant is gone.

WATERBURY
REPUBLICAN-AMERICAN

WATERBURY, CT
DAILY 60,006

MONDAY
MAR 8 1993
BURRELLE'S

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Hatch Act attack

For more than 50 years, the Hatch Act has restrained overzealous federal employees from promoting personal interests by severely limiting their active participation in political campaigns.

Too, the bill has protected federal workers from the demanding political and union bosses who would coerce them into participating in political causes to keep their jobs.

The 1939 bill, sponsored by Sen. Carl Hatch of New Mexico, has been a perennial target of lawmakers scouring for new ways to keep their grips on power.

This year is no different.

With little fanfare, and by voice vote, the House Post Office and Civil Service Committee approved on Jan. 27 a proposal offered by committee chief Bill Clay, D-Mo., that would make the Hatch law almost meaningless.

It passed the House of Representatives last week on a 333-86 vote.

Rep. Clay's idea is to allow civil servants and postal workers to do almost whatever they desire in the political arena as long as they do it away from the office.

Permitted activities would include running for office, raising funds and otherwise helping candidates get elected.

Republicans have succeeded in watering down the bill somewhat. If the bill becomes law, Federal Election Commission employees still could not participate in partisan activities, and federal workers still could not aspire for elected federal posts.

Still, the proposal removes many barriers now preventing federal workers and unions from using their collective power to influence elections, legislation and programs beneficial to their own financial and philosophical ends.

Succinctly, the bill would create a de facto lobby few would dare cross.

Giving the bureaucracy and coercive unions more clout than they already possess is a danger not to be lightly dismissed.

TUESDAY, MARCH 2, 1993 The Washington Times

The Hatch Act's common cause

Say the Internal Revenue Service is auditing your tax returns for the past few years, and your stomach is already doing flips at the prospect. Imagine the acrobatics it would perform if the IRS agent handling that return happened to stop by the house one day and say, "Hi. I'm the Republican (or the Democratic) precinct chairman, and I wonder if you wouldn't mind just putting this nice attractive sign for the party in your front yard where everyone can see it." What would you say?

That's what Rep. Frank Wolf wanted proponents of so-called Hatch Act reform to answer in debate last week. It's an important question. Under existing Hatch Act laws prohibiting partisan political activity among federal employees, that kind of scenario couldn't happen. But the reform would eliminate many of those prohibitions, and the danger is that Americans may someday have to answer that question on their own, far from the bright lights of Congress, back in the shadows where political coercion occurs.

Mr. Wolf didn't get much of an answer. What he got was an unabashed attempt to ram the reform through the House without so much as a smattering of debate. Democrats sought a gag rule that would have prevented any amendments to the legislation but lost when enough lawmakers decided they wanted to take a closer look at the measure. The bill is likely to receive overwhelming approval from the whole House in a vote as early as this week, but the gag is going to have to come off to do it.

Proponents of H.R. 20, notably Rep. William Clay, say reform is necessary because the current statute denies goverment employees political rights enjoyed by private citizens. Among other things, it would allow them to run for office, solicit campaign contributions and, well, ask taxpayers to put up party signs in their front yards. And why not?

Because from the earliest days of this nation, people have understood the inherent dangers of politicizing a federal work force that is supposed to be carrying the wishes of voters in nonpartisan fashion. Thomas Jefferson, whom President Clinton professes to admire, opposed federal electioneering by federal workers, saying it was "inconsistent with the Constitution and his duties to it." Subsequent presidents have endorsed his view, along with the Supreme Court and most federal workers. A 1989 survey by the Merit Systems Protection Board found that most workers like the Hatch Act just the way it is. Only 32 percent wanted "reform" to weaken it. They like the protection it affords them from the partisan agenda of union officials and government superiors.

Depression-era government employees were less fortunate. Some of those working on New Deal programs in Kentucky were threatened with the loss of their jobs if they did not contribute financially or otherwise to the re-election effort of a U.S. senator. A Pulitzer Prize-winning series of news stories laid out the whole sorry mess, and in 1939 Congress formalized prohibitions against electioneering by government employees. So it has remained until now.

Federal employees are not banned from politics. They can vote, make contributions to campaigns and belong to political parties. Anything more than that is a problem. Says Common Cause, "Repeal of the Hatch Act's basic protections, as proposed in H.R. 20, will increase the potential for widespread abuse and open the way for implicit coercion against which there can be no real protection."

When liberal interest groups can make common cause with conservatives like Frank Wolf on an issue like this one, it ought to give pause to lawmakers trying to rush through "reform" before anyone notices. Now everyone is on notice: Don't repeal the Hatch Act.

OCALA STAR-BANNER

OCALA, FL
DAILY 45,724

WEDNESDAY
MAR 24 1993

Keep act intact

EDITORIAL

For half a century, the Hatch Act has prohibited federal employees from taking active roles in partisan poltics.

To ease a restriction that has worked successfully in behalf of the federal workers themselves and the general public would be a damaging mistake. Yet the House has pulled the rug from under the Hatch Act.

The Senate should refuse to go along with the lower chamber's action that would open the door to federal employees serving as officers of a political party, soliciting contributions for partisan political purposes or running as partisan candidates for public office.

If the Senate does vote to gut the act, President Clinton should refuse to sign the legislation, although frankly his close ties to Big Labor leave little hope of this happening. Union leaders are anxious to gain political control over the nearly 3 million federal workers.

Repealing the act will open the door for the rampant abuses that resulted in its enactment in 1939. Before the act was passed, many government employees supposedly while working for the public were actively involved in actions designed to perpetuate the power of the ruling clique and the individual office-holder they worked for.

Federal employees were forced to perform endless hours of political services or to make political contributions they couldn't afford under pressure of losing their jobs.

Surely, our nation does not want to return to such shenanigans. The Hatch Act protects federal workers and the public alike. It is to the credit of many of those workers that they recognize the value of keeping the act intact. A recent survey by the federal Merit Systems Protection Board resulted in 68 percent of the participating employees supporting the Hatch Act.

Employment and promotions with the federal table of organization should not depend on political preference. Federal employees should and must be free from pressure to perform political chores.

NEWS-JOURNAL

DAYTONA BEACH, FL
DAILY 53,339

FRIDAY
MAR 5 1993
BURRELLE'S

Don't mess with Hatch Act

EDITORIALS

The U.S. House of Representatives voted overwhelmingly Wednesday to weaken a law that has shielded federal workers from political pressures for more than half a century.

The Hatch Act was enacted in 1939 to protect employees from being coerced into working for political campaigns or shaken down for contributions. Although it has been a source of frustration to federal employees' unions and to federal workers who wish to get involved in political issues, the law has done its job of shielding federal workers from undue political pressures. It has preserved a politically neutral civil service.

The changes proposed in the House-passed bill would allow federal employees to run for nonpartisan political office — county council, for example — manage political campaigns and collect political donations.

Supporters of the bill say it also would toughen penalties for misuse of authority and improper soliciting of political contributions. And no political work could be done on the job.

Even so, by opening the door to broader political action, the bill creates the potential for widespread abuse.

TOO MANY private employees are pressured into contributing to PACs. Now federal employees will feel that pressure, too, and a good deal more since their livelihoods usually are affected more directly by the decisions of those holding political office.

It is all too easy to see how an employee would feel coerced by his supervisor's political activities even if no overt threat is made or donation demanded.

Too often the off-the-job political activities allowed under these changes could find their way into the workplace. The line between the two is often more apparent than real.

The protections of the Hatch Act should not be weakened. In this time of ever-more-expensive political campaigns, we may expect that federal workers would be subjected to all manner of new fund-raising pressure, both subtle and overt. Now, even more than in the past, the Hatch Act needs to be kept strong. The Senate should take a much harder look at this proposal.

AUGUSTA CHRONICLE

AUGUSTA, GA
SAT & SUN 99,006

SATURDAY
JAN 30 1993
BURRELLE'S
267
eDK XA

Let's keep the Hatch Act

The U.S. Senate's Governmental Affairs Committee has hastily scheduled a Feb. 17 hearing to "revise" the 54-year-old Hatch Act.

This law wisely bars some 3 million federal and postal workers from "active" participation in political campaigns. (However, they have always been able to vote, contribute money to candidates and volunteer for campaign work in off-hours.)

As this is being written, no actual repeal bill has been introduced. That means it's impossible to analyze and prepare comments on legislation that nobody has seen!

So the reason for the Democratic proponents' tactic is simple: Catch the public off guard. They also realize there's no U.S. attorney general in place to present testimony against any precipitous gutting of the law.

The bill that President Bush successfully vetoed in 1990 would have let those 3 million workers hold partisan offices and solicit money from fellow employees for federal workers' political action committees (PACs). But do taxpayers really want their public employees transformed into party hacks and solicitors?

Any civil servant pressured into giving money to, say, a left-wing PAC would understandably be reluctant to file a criminal complaint against their peers, or a superior. It puts their job in jeopardy — which is why the Hatch Act was passed in the first place.

Repeal advocates complain that the act infringes on "free speech." But the *New York Times* editorially warns that "creating a climate in which government employees are likely to feel compelled to engage in politics also offends free speech."

There is no grass-roots clamor for repeal: indeed, the lack of interest testifies to the support the law has received from most federal civil servants and the general public.

Georgians and South Carolinians fearful of a re-politicized civil service had better start expressing opposition to their U.S. senators.

ROME NEWS-TRIBUNE

ROME, GA
DAILY & SUNDAY 20,040

SUNDAY
MAR 14 1993

BURRELLE'S
212 ed. XV

EDITORIAL

Rome News-Tribune

Celebrating 150 years of service: 1843-1993

B.H. Mooney III, *Editor and Publisher*
Don Biggers, *Vice President, News*
Pierre-Rene Noth, *Editorial Page Editor*

OK'ing corrupt practices

CONGRESS and President Clinton will soon officially allow Federal Corrupt Practices.

Doesn't sound very good, does it? Which is why they'd rather everyone just talk about how "the Hatch Act of 1939" is going to be revised to allow federal employees to become actively involved in politics and political campaigns. That law is also known as the Federal Corrupt Practices Act.

The House has already sent this stinkball to the Senate, which is expected to approve it once again. Both houses have done so twice before, only to see both efforts vetoed by Presidents Gerald Ford and George Bush. However, Clinton has no qualms at all about allowing the old political machinery of yesteryear to crank up again.

Some liberal columnists are now touting Clinton as the "new FDR" and maybe he is, if this is the litmus test. The Hatch Act was originally passed because President Franklin Delano Roosevelt was widely accused of trying to build an army of federal employees to work for his re-election.

THE PROPOSED revision is not all bad. It would allow federal employees to run for purely local offices, such as school board, but not for state or federal positions. One sees no reason to disallow participation in local affairs simply because one works for another government.

As to the rest of it: P.U. It would permit some 3 million federal workers in the rank and file to organize political fund-raisers, solicit contributions, endorse candidates, knock on doors, hand out literature and all the rest — so long as they do it on their own time, of course.

While the bill does include penalties for "misuse of authority," the real problem is that there is an implied use of authority inherent in allowing such activities.

"Hi! I'm Bill Aplenty and I work for the IRS. Would you care to contribute something to President Clinton's re-election effort?" He's standing at your door, he probably knows your name, he can look you and your tax returns up at the office. Care to say no to him?

IN ADDITION, creating such an army of special-interest troops (interested in their own self-preservation) is likely to wipe out any hopes of ever reducing the federal deficit. What congressman is going to vote for federal employee layoffs, against salary boosts and in favor of benefit reductions when he knows it assures that, in the next election, thousands of federal workers will be knocking on doors to help his opponent?

And then there's Joe Vacca, president of the National Association of Letter Carriers, who says Hatch must be revised so that federal workers can mobilize politically to push for the next step: Winning the right to strike.

Government workers strik against their employers, people of the United States, is open invitation to national cha That very thought should make boss fire the whole lot of them. . President Reagan did with the controllers.

If federal workers, as a gr fairly well paid and with g benefits, don't like their jobs t have the same choice as the pec paying the taxes to give them th salaries: go look for another they like better.

Nor should federal workers very enthused about getting i politics. Indeed, a 1989 survey the Merit Systems Protect Board found only 32 percent fav ing a revision of the Hatch Act.

MOST OF THE REST apparen liked the idea of not having th arms twisted to kick into campai kitties or getting hints that th might lose favor or promotions they didn't assist some politico tain office.

And, needless to say, if fede offices turn into open political f ums there's going to be some reli tance to talk against or v against the powers-that-be, is there?

Consider this the first campai move by Clinton and the I mocrats for the 1994 and 1996 el tions. It's a blatant attempt to lc up 3 million votes as a start point, tap into a new source contributions and draft a host campaign workers.

These were corrupting practic when the government banned the in 1939. They are no less corrupt 1993.

PANTAGRAPH

BLOOMINGTON, IL
DAILY 51,705

MONDAY
MAR 1 1993

Hatch Act limits shouldn't be lifted

House Democrats were thwarted in their attempt to push through modifications of the Hatch Act with little debate or opportunity to amend the proposal.

However, the issue is expected to arise again.

The Hatch Act's restrictions on the involvement of federal employees in partisan politics have served a useful purpose for more than 50 years. The Hatch Act has helped keep politics out of federal agencies.

Civil servants are supposed to serve the public, not political parties. Taxpayers should not have to second guess the motives of government workers carrying out their duties.

The appearance of impropriety can be almost as damaging as misconduct. It can destroy trust in government institutions.

Yes, the prohibitions on running for office and actively working in political campaigns do somewhat limit the rights of federal employees. However, that must be balanced with the rights of citizens to have impartial government agencies.

In addition, the Hatch Act protects federal workers from being forced into supporting a partisan political cause.

Proposed revisions in the Hatch Act would prohibit federal employees from coercing other employees to make donations or engage in political activity. However, subtle hints and implied favoritism would be difficult to police.

The heavy-handed manner in which House Democrats tried to rush through these changes should sound alarm bells. If this is such a good idea, then why was the Democratic leadership reluctant to engage in full, open debate and allow consideration of alternatives?

The Hatch Act has worked well. Leave it alone.

THE INDIANAPOLIS NEWS

INDIANAPOLIS, IN

MAR 1993

The Indianapolis News
(Indianapolis, IN)

March 2, 1993

BURRELLE'S

How embarrassing

House Democrats were embarrassed last week when they failed in an attempt to ramrod through a measure to substantially gut the Hatch Act. The act prevents federal employees from engaging in partisan political activities.

The Democrats should have been embarrassed to use a parliamentary ploy in an effort to shut off debate or the introduction of any amendments to the bill.

But it will be even more embarrassing for them to pass this measure. It would undo an important safeguard to a growing federal bureaucracy that has stood for nearly a half century.

The House vote fell three votes short of a two-thirds majority to pass the bill under rules that foreclosed the introduction of any amendments or debate on amendments. It is expected to be reconsidered under normal rules that will allow amendments to be considered and require only a simple majority for passage.

A similar measure easily cleared Congress in 1990 but was wisely vetoed by President Bush. President Clinton, however, courting the labor vote, has promised to sign it.

The legislation will eliminate Hatch Act restrictions involving nearly 3.2 million federal employees and postal workers that prohibit them from engaging in partisan political activities, running for political office, managing political campaigns and raising campaign contributions.

Congress originally passed the Hatch Act in 1939 amidst the New Deal growth in federal government and revelations of political coercion within the Works Progress Administration. In addition to curbing political corruption, the Hatch Act has served to an extent in keep the federal bureaucracy from becoming a self-perpetuating lobbying force for its own expansion.

Many federal employees welcome the protections of the Hatch Act because they insulate them from political coercion, and they want to see the restrictions retained.

Republicans, who objected to attempts to ramrod the bill through, have sought in particular to amend the bill so it would not affect federal law enforcement and intelligence employees.

Rep. Frank R. Wolf, R-Va., asked, "Would it be appropriate for an assistant U.S. attorney, who is preparing a case against a prominent political figure for corruption, to be permitted to work on the campaign of that politician's opponent?"

But his more salient observation concerned the overall thrust of this attempt to weaken the Hatch Act. "This bill is a flawed bill," he said. "This bill would cause the politicizing of the federal work force. The rule of thumb will be whatever is permitted will be what is expected."

House Democrats should think twice before further embarrassing themselves by passing this bill. The Senate, which has a more restrictive version of the measure, should also consider whether it really wants to undo safeguards that have worked for a half of a century.

And President Clinton, who railed against special interest lobbying groups in his State of the Union Address, should seriously considered whether he wants to sign such a measure.

It would establish a 3.2 million member lobbying organization with an agenda to increase federal spending and expand the federal government.

Iowa Press
Clipping Bureau
Des Moines Register
Des Moines, IA 50309

March 5, 1993

Don't scrap the Hatch Act

Keep partisan politics out of federal civil service.

One of the messages of last fall's election was that people are fed up with insider privilege. They're tired of a system that seems to work more for the benefit of the servants than of those they are supposed to serve.

But if Congress got the message, you sure couldn't tell it by Wednesday's vote in the House. The vote was to gut the Hatch Act, the law that restricts political activity by federal employees. The effect will be to tilt the system a little more in favor of the insiders — in this case federal employees.

The vote is the payoff from years of lobbying by federal-employee unions. The Senate is expected to follow suit, and President Clinton is expected to sign the change into law. When that happens, a long-standing bargain between federal employees and the public will have been shattered.

The bargain was this: The public granted to federal employees more protection than ordinary workers get. They can't be fired arbitrarily, and they enjoy other protections generally not available in private-sector employment.

In exchange, the federal civil service is expected to perform its job with nonpartisan professionalism. To avoid any hint of politics, federal employees are forbidden to run for office, to take active part in campaigns, to hold office in political parties, or solicit campaign contributions.

Those are reasonable restrictions. The public has a right to expect that federal law be administered with absolute nonpartisan fairness. The proposed gutting of the Hatch Act would allow federal employees to work in political campaigns or to solicit campaign funds in off-duty hours. The public is asked to believe that federal workers can be fierce political partisans at night, then change into completely nonpartisan civil servants by day. Hogwash.

The unions seeking to gut the Hatch Act argue that employees are denied their "right" to be active in politics. No, the employees voluntarily agreed to give up partisan politics when they accepted government employment. In exchange, they were given the protections of the civil-service system.

Now, the unions want it both ways. They want to be able to take part in politics, and thus gain the rewards that can come from giving campaign help to the politicians who set their salaries and vote on their benefits. But they want to keep their civil-service protections, too.

The public shouldn't stand for that one-sided deal. If federal employees want the benefits that they can gain from taking part in politics, they ought to be willing to accept the liabilities too. They should surrender their civil-service protection and go back to the old spoils system.

Better yet, everyone should stick with the original deal: Shield civil servants from political firings but at the same time ask them to refrain from engaging in politics themselves. That's a fair bargain that has both served the public and helped maintain the integrity of federal service.

SUNDAY SUN-JOURNAL

LEWISTON, ME
SUNDAY 43,625

MAR 14 1993

BURRELLE'S

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Keep Hatch Act

When federal workers say they're "Hatched," they're not talking about their mode of entry into this world. They mean they are prohibited from running for partisan political office, managing campaigns or raising money for partisan candidates — activities forbidden under the Hatch Act passed in 1939.

Congress is on the verge of "unhatching" federal workers. The House passed a bill that guts the Hatch Act earlier this month. The Senate will hold hearings in April.

If a bill passes both houses, as a similar one did in 1990, odds are that President Bill Clinton will sign it, say Washington observers. President Bush vetoed the 1990 version.

Overhauling the Hatch Act would be a serious mistake. The law protects federal employees from being coerced by their unions, supervisors or colleagues into actively supporting political candidates. It also protects citizens from intimidation by bureaucrats administering government programs.

The bill that passed in the House would allow federal employees to run for local office, manage political campaigns and solicit contributions on their own time. But suppose an Internal Revenue Service employee asks you for a contribution while your return is being audited. Does it really matter if the request occurs during or after business hours?

The argument that employees would be protected from arm-twisting doesn't wash either. Coercion doesn't have to be blatant to be effective. Subtle means, a little "friendly persuasion" shall we say, can be used to pressure reluctant employees into making contributions or stuffing envelopes.

Some federal employees resent being "Hatched." But many others like having a hassle-free excuse for not getting actively involved in politics. Federal employees are still free to vote, belong to political parties and make contributions. What they're not free to do currently is intimidate fellow employees or citizens into supporting candidates. That's how it should remain.

BANGOR DAILY NEWS

BANGOR, ME
DAILY 77,491

TUESDAY
MAR 16 1993
BURRELLE'S

Hatch Act repeal

While most of the country was preoccupied with the Clinton budget, base closures and the prospect of higher energy taxes, a determined group of congressmen pushed through a bill that would remove important provisions of the Hatch Act, which for 53 years has protected the federal system and its workers from the consequences of entanglement in partisan politics.

Although opponents of the act believe this is an excellent time to attack the act — pushing amendments through a new Congress and past a new president — just the opposite is true.

Given the unprecedented level of public unhappiness with elected officials and widespread cynicism about government generally, an assault on the precepts of the Hatch Act, wrong under any circumstances, would be a serious mistake. In this political climate, it could create a destructive backlash that would serve no interest, and possibly place additional restrictions on political participation by federal employees.

The Hatch Act, named for Sen. Carl Hatch, D-New Mexico, was passed in 1939 in reaction to complaints and stories about New Deal workers who had been forced to work in behalf of political incumbents. The country had addressed the worst aspects of the spoils system more than 50 years earlier, but it was clear that the federal government and its employees needed additional protection from the pressures of partisan politics.

Federal workers retained the right to vote, to belong to political parties and make monetary contributions to candidates, but under Hatch they were prohibited from holding party offices, working in campaign offices or managing political campaigns. They can't solicit funds from others in behalf of candidates, or run for elected office.

That's a lot to give up, but the return is substantial: Workers can't be pressed into service in behalf of politicians, or risk losing their jobs. In the opinion of Common Cause, it "strikes an appropriate balance between the federal worker's ability to participate in political activities and the public's right to fair and impartial administration of government."

The Hatch Act has been challenged three times, but upheld on each occasion by the Supreme Court. In its 1973 decision, Justice Byron White observed that it was "in the best interest of the country (that) ... the political influence of federal employees on others and on the political process should be limited."

Repeal efforts that made it through Congress were vetoed twice, once in 1973 by President Ford and again in 1990 by President Bush. The House this year approved of its repeal; the Senate was awaiting appointment of a new attorney general before making a decision.

The Senate should stand firm against gutting the Hatch Act, which despite its cumbersome rules and administration, has provided this country with protection against the partisan politicizing of its federal work force.

TELEGRAM & GAZETTE
WORCESTER, MA
DAILY 116,767
WEDNESDAY
MAR 10 1993
BURRELLE'S

Save the Hatch Act

EDITORIAL

50-year-old law protects federal workers

The Hatch Act, enacted more than 50 years ago, was designed to ensure that the federal bureaucracy is administered in a fair and impartial manner through protection of employees from partisan political pressure. This law has served the nation well.

The 1939 act bans such political activity by federal workers as running for federal or state office, organizing fund-raisers and publicly endorsing candidates.

Any attempt to weaken the Hatch Act opens the door to implicit coercion and abandons the concept of an unpoliticized civil service. It increases the potential for widespread abuse, favoritism and intimidation.

Although surveys show most federal employees oppose weakening the law, the politicians and public employee unions find the prospect of injecting partisanship into the federal work place irresistible.

Twice during the last four years, Congress passed bills to water down the Hatch Act but ran into vetoes by President Bush.

Last week, the House again voted to emasculate the law by allowing some 3 million federal and postal employees to support political candidates, organize political fund-raisers, even run for "nonpartisan" state offices.

These changes would make employees pawns in the hands of politicians. People in Central Massachusetts who may doubt the need for shielding workers from political intimidation should remember how Worcester County Sheriff John M. Flynn dealt with jail employees who backed his opponent: He demoted them.

"We believe the current Hatch Act strikes an appropriate balance between the federal worker's ability to participate in political activities and the public's right to fair and impartial administration of government," says Common Cause, the nonpartisan watchdog organization.

Upholding the constitutionality of the Hatch Act, the U.S. Supreme Court stated: "It is in the best interest of the country, indeed essential, that federal service should depend upon meritorious performance rather than political service."

We fully agree with both statements.

The Senate should reject the latest attempt to strip federal employees of much-needed protection. If it does not, President Clinton should exercise his veto power.

BOSTON HERALD

BOSTON, MA

MA-25 D 345 664

Boston Herald
(Boston, MA)

March 8, 1993

MAR 8 1993

BURRELLE'S

Hatch Act endangered

Feeling their oats after last year's election, the unions which represent federal workers are moving to gut the Hatch Act. This attempt to inject politics into the federal workplace must be defeated.

Last week, the House voted 333 to 86 to allow government employees to openly endorse candidates for public office and even to organize fundraisers — on their own time, sponsors assure us. If the Senate concurs, all that will be left of Hatch is the prohibition against federal workers actually running for partisan office.

The Hatch Act has always been a necessary protection against politicization of the federal workforce. It was enacted in the 1930s, after considerable arm-twisting of government workers to enlist them in electoral causes.

U.S. Supreme Court Justice Byron White, a Democratic nominee to the bench, put the matter well: "It is in the best interest of the country, indeed essential, that. . . the political influence of federal employees on others and on the political process should be limited."

Federal workers themselves perceive the utility of Hatch, which protects them from forcible political recruitment. In a 1989 poll of government workers by the Merit Systems Protection Board, only 32 percent favored weakening the law.

If President Clinton is serious about getting federal spending under control, he will have to tackle the bureaucracy. Giving federal unions more political clout will make that task next to impossible.

The Hatch Act has served the nation well for more than half a century. Due to their positions of trust — as well as their vulnerability to partisan coercion — federal employees need the protection it affords. Perhaps now more than ever.

PATRIOT LEDGER

QUINCY, MA
DAILY 87,018

TUESDAY
MAR 9 1993

BURRELLE'S

198 ...ebc PW ...U

Leave the Hatch Act alone

Congress shouldn't open the gates to partisan politics in the federal civil service. The Senate should reject a House-passed bill that would allow this by weakening the half-century-old Hatch Act.

Yes, times have changed since 1939 when that law was passed, but the reasons for it remain valid. It's not a good idea to have federal workers engaged in partisan political activity.

The Hatch Act prevents federal employees from running for political office, soliciting campaign funds or participating actively in political campaigns. These restrictions were enacted to stop a blatant abuse: Federal workers pressured to contribute to political parties and help out in election campaigns. The "or-else" part was understood. If you didn't kick in, you might lose your job to a more coooperative citizen or forget about a promotion.

While protecting federal workers from partisan intimidation the Hatch Act also helped insure the public and administrations of both parties that they would be served impartially by the nonpartisan civil service. In turn, federal workers could expect to be treated like professionals by both Republican and Democratic administrations.

Loosening these restrictions, as legislation passed last week by the House would do, runs the risk of politicizing the federal service, to make merit less important than political orientation. The bill would permit civil service and postal employees to run for local office, though not for federal or state office, on their own time without taking a leave of absence. More seriously, it would allow federal workers to manage political campaigns and raise money for candidates, though not during office hours.

The bill would not relax the present ban on federal employees using their positions or information they receive at work to advance political goals or candidates.

Even so, we see no good reason for dismantling a good-government law that has proved its worth for so many years. The argument that the Hatch Act unfairly strips federal workers of political rights is not persuasive, given the more important public benefits of insulating the civil service from partisan politics and the fact that the act has been upheld by the U.S. Supreme Court.

The Hatch Act isn't broken. Congress shouldn't tamper with it. And President Clinton, who has said he would sign the legislation, should not be encouraging this ill-considered "reform."

STANDARD-TIMES
NEW BEDFORD, MA
DAILY 43,600
WEDNESDAY
MAR 10 1993
BURRELLE'S
167 eck PK ...y

EDITORIAL

Hatch Act repeal will lead us to a rich vein of corruption

For the past half century, the federal bureaucracy has been immunized against infestation by political hacks by the Hatch Act, which sharply restricts the employees' political activities.

In place of the corrupt environment the Hatch Act was enacted to repair, we now have a federal work force that, it can be argued, is quite professional. Robert Tobias of the National Treasury Employees Union proudly told a House panel, "We are not political cronies."

This, evidently, is unacceptable to the House and to President Clinton, who are determined to eviscerate the Hatch Act and turn the clock back to the days when getting a federal job or a federal promotion often meant carrying out blatant political favors.

Although the provision of the Hatch Act were upheld by Supreme Court decisions in 1947 and 1972, a vague notion that the Hatch Act is unconstitutional, or at least un-American, propels this ill-advised repeal movement.

How convenient for the political power structure. Loosen the restrictions of the Hatch Act by allowing federal employees to raise political money, conduct campaigns, and even run for office, and — presto! Three million people are suddenly available for enlistment in congressional and presidential campaigns. (But they can't run for Congress. That would be going *too far.*)

And they will be enlisted, make no mistake. Fifty years of the Hatch Act hasn't changed human nature, and that claim of professionalism in the ranks is directly traceable to the fact that when the boss or the congressman came around looking for political favors, the employee could simply say, "Get lost." Repeal the Hatch Act, and these people will start getting fund-raising ticket books in the mail from their politically connected bosses, representatives and unions — in their off-hours, of course.

Meanwhile, even though the law still will prohibit political activity while on duty, there will be political activity on duty. Ask anyone on Beacon Hill. They know.

Beyond that, federal employees at all levels will be left to wonder whether this or that promotion or transfer was because of some favor he or she did or didn't do for someone. Perhaps this is why a 1992 survey found only 30 percent of federal employees wanted relaxation of the Hatch Act, while 30 percent were opposed and 40 percent were neutral. Perhaps 70 percent of the federal workforce realizes that the Hatch Act is at least as good as it is bad — for them personally, and for the nation.

This backsliding couldn't come at a worse time for the country. No sooner had we started thinking seriously about program cuts, military base closings, and all the other hard budget decisions, than Congress and President Clinton set out to unleash a political army with a vested interest in the status quo. What congressman is going to take a hacksaw to a federal bureaucracy that runs thick with potential contributors and campaign workers? What employee, or group of employees, would fail to take advantage of the new political leverage they will have against threats to their public sector jobs? At a state and local level, what happens when tax auditors, prosecutors and the like start taking jobs on public boards or political committees? How would we like it if U.S. attorney were chairman of the Democratic Party in Massachusetts, or the manager of a Senate campaign in his "spare time"?

Those who contend that there won't be abuses — enormous abuses — are deluding themselves. After 50 years of the Hatch Act, we have not experienced the kind of institutional corruption that produced it. When we look at the size of the federal bureaucracy today, and the vast machinery of politics, the removal of restraints is positively frightening in its possibilities.

Presidents Reagan and Bush rightly vetoed previous attempts to dismantle the Hatch Act. What they did was good for the nation, and enabled that union representative to maintain a credible claim of untarnished professionalism. Those claims will vanish overnight if the Hatch Act is repealed, to be replaced by a whole new layer of suspicion and political manipulation.

Doubt it? Do you want to risk giving it a try? Democratic Reps. Barney Frank and Gerry Studds evidently do, since they were among the 331 eager Democratic votes for repeal (there were two defectors). Rep. Peter Blute, the freshman Republican, was one of the 86 courageous "no" votes. Now all that stands in the way of Hackerama II is the Senate. Brace yourself.

SUN HERALD
BILOXI, MS
DAILY 49,321
TUESDAY
MAR 9 1993

EDITORIALS

Changing Hatch Act would be damaging mistake

Congress is on the verge of destroying the 54-year-old Hatch Act and President Bill Clinton has said he would sign the destruction order.

This would be the worst possible thing these two branches of government could do for the almost 3 million federal workers and for the 246 million or so citizens for whom they are supposed to work.

The Hatch Act wisely prohibits federal employees from running for federal and partisan state offices and from full participation in political party activities. The net effect of removing the prohibition will be to transform the federal bureaucracy into a giant political machine, to the everlasting detriment of the nation.

Such a development was exactly what Congress feared President Franklin D. Roosevelt was trying to do in 1939 when it passed the act. Since then, it has prevented subsequent politicians from taking charge of a national force whose clout would be unbelievably strong.

In theory, federal employees work for the people, delivering necessary government services fairly and equally. Without the Hatch Act to restrain them, employees could themselves run for some political offices. They could organize fund-raisers. How would you like to tell an IRS agent who is auditing your tax return that you refuse to contribute to his boss' campaign fund?

The law shields government employees from political manipulation, a shield Presidents George Bush and Gerald Ford preserved when they vetoed Hatch Act reforms in 1990 and in 1976.

President Ford said, "The public expects the government service will be provided in a neutral, nonpartisan fashion. . . . This bill would be bad for the employee, bad for the government and bad for the public."

President Bush noted, "It has been manifestly successful over the years in shielding civil servants, and the programs they administer, from political exploitation and abuse. The Hatch Act has upheld the integrity of the civil service by assuring that federal employees are hired and promoted based upon their qualifications and their political loyalties."

Anyone who believes that those protections would remain without the Hatch Act is hopelessly naive.

Three times the Hatch Act has been challenged to the level of the U.S. Supreme Court and three times court has upheld it. Justice Byron White commented that the court's ruling confirmed "the judgment of history that it is in the best interest of the country, indeed essential, that federal service should depend upon meritorious performance rather than political services, and that the political influence of federal employees on others and on the electoral process should be limited."

Despite this history, the House of Representatives last week voted 333-86 to gut the Hatch Act. Mississippi four Democratic congressmen voted to politicize government employees.

There's another disturbing reality about the present rush to do away with the Hatch Act. Federal employee unions are among the strongest supporters of trashing it. The president of one of those unions, Joe Vacca, National Association of Letter Carriers, said that federal employees will never win the right to strike until Hatch changed. Imagine the damage a strike of that union could cause.

Further, the country is supposed to be entering a deficit- and debt-reduction phase. President Clinton has pledged to reduce the federal work force by 100,000 over a four-year period. Does anyone seriously believe he'll be able to eliminate any government workers and face the wrath and increased power of the unions that represent those employees?

Federal employees are free to vote, but their supervisors may not tell them how or suggest unpleasant consequences if they vote wrong. The employees may give their money to candidates of their own choice and not to their bosses' favorites. They may, in their off hours, take part in nonpartisan political activities.

They are better off with the Hatch Act.

We're all better off with it.

RED WING REPUBLICAN EAGLE

RED WING, MN
DAILY 8,242

THURSDAY
MAR 4 1993

BURRELLE'S

EDITORIAL

Don't mess with Hatch Act

A proposal to dramatically restructure the Hatch Act is moving through Congress at warp speed — with the apparent blessing of President Clinton. That's easy to understand, given the coziness between public employee unions and Democrats.

The Hatch Act limits political activity of federal workers. The proposed legislation is dangerous at best. It should be resisted on all fronts. The measure would greatly enlarge the power of public employee unions and further establish the bureaucracy as the real governing force in the nation.

Consider simply the voice of public employees in Minnesota. Wages and benefits paid to public employees account for 76 percent of the overall state operating budget, 54 percent of current expenditures for cities over 2,500 and 50 percent of total current expenditures for Minnesota counties.

A Minnesota Chamber of Commerce study of Minnesota public employee compensation found.

• Most public employees receive more generous pay than their private sector counterparts for both salary and benefits. The disparity reaches 50 percent in some cases.

• Public sector wages and benefits are growing faster than Minnesotans' personal income.

• Public sector compensation and performance frequently are not linked.

The findings echo those of other studies, including a 1992 report by the state auditor. Now multiply those numbers — and accompanying influence — on a national basis.

Clinton's support of gutting the Hatch Act goes contrary to his campaign pledge to reduce the federal work force and restore government accountability. Modify the Hatch Act, and it's extremely unlikely most members of Congress ever would take a tough vote contrary to the wishes of public employee unions. Rip open the Hatch Act, and federal employees' right to strike won't be far behind.

This nation's civil service system is far from perfect, but at least it prevents employees from openly playing politics. Replace the Hatch Act, and the United States stands to revert to the days of political spoils.

THE KANSAS CITY STAR

KANSAS CITY MO

MO-351 [illegible]

MAR 14 1993

BURRELLE'S

Hatch Act in danger

The 3 million federal employees are a formidable political force. They would be much stronger under legislation now in Congress that would weaken the longstanding Hatch Act. That law restricts the political activities of the bureaucracy.

Political pressure, including that by organized labor, led to a 333-86 House vote to scuttle the 1939 federal statute.

This pressure has built before. Two bills that would cripple the Hatch Act were vetoed during the Bush administration. President Clinton has said he would sign the new measure if both houses approve it.

The House bill would allow federal employees to seek some political offices, organize fund-raisers and endorse candidates, if they did it on their own time.

Supporters cast this as a civil rights issue. It isn't; the constitutionality of the Hatch Act limitations is sound.

Corrupt political activities in the bureaucracy led to the Hatch Act. Some members of Congress feared that President Franklin D. Roosevelt would mobilize federal workers for his re-election campaign.

Many federal workers favor the law. It keeps them from being coerced into contributing to campaigns or working in them.

For everyone else, the Hatch Act helps keep politics out of governmental decisions. How would you like to have an IRS agent solicit a campaign contribution from you? Or face a fund-raising request from a federal employee with authority in a matter you were trying to resolve with the government?

ST. JOSEPH NEWS-PRESS -- March 20, 1993
St. Joseph, MO

Don't emasculate Hatch Act

In 1939, in an effort to break the power of corrupt political machines and to protect federal employees from political retaliation for proper performance of their duties, the Congress of the United States adopted the Hatch Act. For more than 50 years, the statute has protected federal workers from political abuse.

While the federal employees were barred from running for political office or soliciting funds for political parties and campaigns, they remained free to vote as they desired and were allowed to contribute to political campaigns, give money to candidates or volunteer in their off-hours for non-partisan political activities.

But some politicians do not like the Hatch Act restrictions and view the millions of federal employees as a rich lode to be mined for funds and see the employees as a tool for political activity and pressure. For example, income tax auditors and prosecutors would be confronted with subtle pressure to contribute money and time and favors to political interests.

While the Hatch Act may need some fine-tuning and adjustment to modern times, it certainly should not be butchered, hamstrung or emasculated for political purposes. Above all, federal employees should be protected from political pressures of all kinds from all political parties, as well as from political action committees.

-ISSISSIPPI PRESS

PASCAGOULA, MS
DAILY 22,802

THURSDAY
FEB 25 1993

BURRELLE'S

Hatch Act has served us well

Employment applications that stress squooshy "experience" over concrete knowledge already have made the federal workforce less of a meritocracy. But the politicization of the bureaucracy will take a quantum leap if Congress much dilutes the 1939 Hatch Act.

Passed after reports revealed how New Deal politicos were forcing federal workers to campaign for Democratic candidates, the act insulates government employees from partisan politics. Essentially, these employees cannot work in campaigns, run for office or solicit political donations from fellow workers. Our sense is that most Americans support such restrictions, which foster public trust in the impartiality of the nation's civil servants.

What of the government workers themselves? Some claim that Hatch abridges their First Amendment right to free expression, though they can still vote and discuss politics. The Supreme Court, however, has upheld the act. Justice Byron White noting that "the political influence of political employees on others and on the electoral process should be limited." Besides, most federal workers must enjoy protection from bosses' shakedowns.

Presidents Ford and Bush vetoed congressional attempts to water down Hatch, but President Clinton endorses the idea. Legislation sponsored by Sen. John Glenn, D-Ohio, and Rep. Bill Clay, D-Mo., would send federal workers down the partisan path by allowing them during off-hours to carry posters at political rallies and to distribute campaign materials. Bad business. Another revision — permitting work in voter-registration drives — seems unobjectionable.

The core of Hatch should not be disturbed, however, because it reminds rank-and-file bureaucrats that their cardinal mission is to serve the public's abiding interests — not ephemeral politicians and their lieutenants. Already the Justice Department is investigating whether State Department staffers crossed this line by searching for passport dirt on presidential candidate Bill Clinton.

Perhaps President Clinton will ponder that sort of abuse when the latest attempt to hobble Hatch lands on his desk.

MISSISSIPPI PRESS

PASCAGOULA, MS
DAILY 22,802

FRIDAY
MAR 26 1993

BURRELLE'S

Gutting Hatch Ac really a disservic to this country

Over the years it was thought that whe someone took a public (governmental) job, th person then worked for the benefit of the public Government bureaucracy is so big now that jus the opposite is the case.

And now the push is on in Congress to abolis the Hatch Act so that governmental workers ca get more into politics. That's not good.

The Hatch Act was passed in 1939 to protect th expanding federal work force from politica exploitation. The act prohibits federal worker from actively participating in partisan po[illegible]s But the Hatch Act doesn't cut federal emplo[illegible]ee out of the electoral process. They can stil contribute money to candidates of their choice volunteer in off hours for non-partisan politica activities, and they can vote.

Government workers in state and local elec tions are often intimidated into contributing t and working for their elected bosses. There is n reason to believe that same situation wouldn happen at the federal level if the Hatch Act i gutted.

Common Cause, the citizens advocacy group thinks repeal is a terrible idea.

The proposal had been blocked by both Presi dents Reagan and Bush. President Clinton sup ports the revision, as does organized labor.

We support the Hatch Act, and we hope ou congressional delegation will lead the fight t continue the act.

Omaha World-Herald
Omaha, NE)

March 8, 1993

BURRELLE'S

Federal Workers May Lose Shield

EDITORIAL

Members of the U.S. House of Representatives voted to weaken a good law when they advanced legislation that would cut the heart out of the Hatch Act.

The 54-year-old law has helped keep partisan politics out of the federal workplace. It has protected government employees from being forced to help in the election campaigns of their bosses. It has given those employees a way to say no to pressure from their bosses or their union to work for candidates who favored more spending on the bureaucracy.

The Hatch Act, in short, was passed for the purpose of preventing the federal bureaucracy from being converted into a political machine.

But now the House, on a 333-86 vote, has approved a measure that would water down the law by allowing government employees to engage in partisan political activity and fund-raising so long as it occurs on the employees' own time.

Among the Midlanders who voted for the unfortunate change were Reps. Fred Grandy, R-Iowa, and Neal Smith, D.-Iowa, and Doug Bereuter, R.-Neb., and Peter Hoagland, D.-Neb. We commend Reps. Jim Ross Lightfoot, R.-Iowa, and Bill Barrett, R.-Neb., for opposing the change.

A 1989 government survey of federal employees indicated that only 32 percent of those surveyed wanted the act weakened. It isn't hard to understand why the number wasn't higher. The law protects the employees from political pressure as well as protecting the public from corrupt government.

Allowing politics to intrude into the government workplace undermines the principle that government should be the servant of the people, not the other way around. Imagine what could happen if a government inspector or tax auditor dealt with a business or citizen by day and came back collecting for a candidate that night. Even though the employee would be politicking on his "own time," as provided by law, the effect would be to politicize the office.

The public's interest in maintaining a professional, nonpartisan civil service requires that federal employees not become partisan political activists, even on their own time. It's one of the things that a person gives up in exchange for federal employment.

Both during and after the last fall's election, President Clinton said the voters wanted "change" in Washington. It's hard to believe that creating a workforce of power-wielding political organizers is the type of change the voters had in mind.

Don't unhatch fed workers

■ Diluting the Hatch Act will politicize the civil service.

In a little-publicized action last week, the U.S. House voted overwhelmingly to neuter the 54-year-old Hatch Act, which limits the political activity of federal workers.

Both Nevada representatives — Barbara Vucanovich, a Republican, and James Bilbray, a Democrat — sided with the majority. The bill now awaits debate in the Senate.

Those rushing to water down the Hatch Act — mostly Democrats — argue that it violates the free speech rights of federal employees. The more likely goal of their efforts, however, is to gear up an enormous political machine they hope would favor and sustain big government.

The Supreme Court has three times upheld the Hatch Act, including a 1973 ruling that stated: "It is in the best interest of the country, indeed essential, that the political influence of federal employees on others and on the political process should be limited."

We agree. Apparently, so do many federal workers. A 1989 survey by the Merit Systems Protection Board found that 68 percent of federal workers opposed weakening the Hatch Act. The reason: employees fear that without the act they'll be harassed by their bosses or federal unions to take part in political activities or make campaign donations.

The act itself stems from instances in the late 1930s when employees of the Works Progress Administration — a New Deal jobs program — were assigned to spend the election season stumping for candidates who backed FDR. In Kentucky, some employees were threatened with the loss of their jobs if they didn't contribute to the re-election effort of a U.S. senator.

But the law doesn't just protect federal workers from coercion, it also shields citizens from political pressure applied by members of the public sector. "Imagine an IRS agent going over your tax return," said Reed Larson, president of the National Right to Work Committee, which is scrambling to rescue the Hatch Act. "That evening, the same IRS agent appears at your door 'suggesting' you sign a (political) petition. . . ."

If the new version of the Hatch Act become law, its proponents claim provisions in the bill will still safeguard federal employees from political pressure, and prevent them from using their jobs to affect an election. But, as syndicated columnists Jack Germond and Jules Witcover recently wrote, "Political pressure can take many subtle forms."

As it stands, the Hatch Act does not prohibit federal workers from voting, joining political parties or contributing to campaigns. It simply provides a modicum of protection for workers and citizens alike to ensure that serving the public interest, not partisan politics, prevails.

Nevada's two senators, Richard Bryan and Harry Reid, should join efforts to oppose this power grab by the federal employees unions.

ELKO DAILY FREE PRESS
ELKO, NV
DAILY 5,677
THURSDAY
FEB 25 1993

Labor unions cashing in their political chips

EDITOR

Big labor is on the attack at the state and federal levels, calling in markers issued to unprincipled politicians during the past elections. Labor unions invested millions of dollars on politicians last fall; and, unlike President Clinton's proposed investments, big labor's really do have a payoff.

Unfortunately, the dividends benefit only the union itself. Workers, employers and the economy as a whole will suffer as the union bosses collect their harvest.

Here in Nevada, state senators are being asked to repeal the state's right to work law by passing Senate Bill 202. Dubbed the "fair share" bill of 1993 by sponsors, the legislation would force all workers to pay union dues. With more and more workers refusing to go along with the destructive practices of labor unions, laws such as SB202 are big labor's only hope of keeping its claws sunk into the private-sector work force.

Citizens of Nevada must remind their legislators that right to work laws, which allow people to work without having to pay tribute to union bosses, are good for the state's economy. Compulsory unionism, on the other hand, would be devastating to the goal of economic diversification. A study by the Fantus Corporation, a leading business relocation consultant, found that nearly half of all businesses consider only right-to-work states in their expansion and relocation plans.

If our state legislature were to pass, and our governor were to sign, SB202, Nevada would be shutting the door on 50 percent of the businesses seeking a new location. This bill is good only for the union bosses and the politicians who feed off them.

Back in Washington, D.C., union bosses are poised to repeal the Hatch Act. Passed in 1939, this act prohibits federal employees from intimidating or bribing voters or actively campaigning for a cause or a candidate.

The National Right to Work Committee notes Nevada Senators Harry Reid and Richard Bryan already have betrayed their constituents once, by voting to repeal this act in 1990, and will do so again unless told not to by the people who voted them into office.

Without the Hatch Act, the Right to Work Committee explains, the following could happen: An OSHA inspector, prior to touring a factory, recommends the owner hang a campaign poster for a union-backed candidate in the office. Or, the committee warns, an IRS agent working on a person's tax return could ask for a contribution to a politician's campaign.

"Sounds illegal. And for the time being, it still is," the committee writes. "But if Senators Bryan and Reid gut the Hatch Act, nothing will stop the union czars from conscripting the vast federal bureaucracy into their lobbying and electioneering schemes." With big labor's very own president on duty, it will be up to the people to put the screws to their representatives — there is no hope for a veto this time around.

The Hatch Act repeal represents one more contradiction in our new president. On the one hand, he must pay back the unions for all their support. On the other, he must do a credible job of reining in the government if he were to aspire toward re-election. One of his proposals to accomplish that is to sack 100,000 federal employees. But as the *Wall Street Journal* noted last week, repealing the Hatch Act — and thereby increasing the power of the public-sector unions — will make it that much more difficult to reform the federal bureaucracy.

But to a president who believes more federal spending is the answer to fixing the deficit, perhaps there is no contradiction in trying to "reinvent government" by allowing "the civil service to become a giant lobby for its own self interest," as the *Journal* phrased it.—DS

LAS CRUCES SUN-NEWS

LAS CRUCES, NM
DAILY 19,200

SUNDAY
MAR 7 1993

Don't destroy the Hatch Act

The Hatch Act has been in effect for 54 years to shield federal workers from political coercion and to protect private citizens against harassment by federal workers promoting political gain.

The Hatch Act should be kept in force, but to do so will be up to the U.S. Senate. New Mexicans should be making their views on the subject known to Sen. Pete Domenici, R-N.M., and to Sen. Jeff Bingaman, D-N.M. When the matter came up in 1990, Bingaman voted in favor of destroying the Hatch Act while Domenici, according to the National Right to Work Committee, "voted to protect the Hatch Act after Right to Work members convinced him to repudiate his prior support for Hatch Act destruction."

Big Labor's new clout under the Democratic-led Administration and Congress showed itself on Wednesday when the U.S. House of Representatives voted 333 to 86 to gut the Hatch Act, with Reps. Joe Skeen, R-N.M., and Bill Richardson, D-N.M., voting with the majority. Rep. Steve Schiff, R-N.M., voted to keep the Hatch Act protections.

New Mexico has a tie to the history of the Hatch Act, The legislation was named after Democratic Sen. Carl Hatch of New Mexico. Notes *The Wall Street Journal* in a Feb. 19 editorial: "It was passed in 1939 to tighten longstanding protections against a politicized federal work force. A Pulitzer Prize-winning series had documented how New Deal workers in Kentucky and other states had been coerced into supporting political incumbents."

The Supreme Court has always upheld the Hatch Act, and Presidents Ford and Bush vetoed attempts to repeal the act in 1975 and in 1990. Reed Larson, National Right to Work president, states: "Destroying the federal Hatch Act means conscripting 2.9 million federal workers into Big Labor's political machine. That's why most federal workers *oppose* Hatch Act repeal, and why union officials are so hungry to destroy this law."

As *The Washington Times* points out, "Federal employees are not banned from politics. They can vote, make contributions to campaigns and belong to political parties. Anything more than than is a problem."

Common Cause says repeal would "increase the potential for widespread abuse and open the way for implicit coercion against which there can be no real protection."

The Hatch Act should be kept, and Bingaman and Domenici should help do so with their votes.

WATERTOWN DAILY TIMES

WATERTOWN, N.Y.
DAILY & SUNDAY 22,300

SATURDAY
MAR 6 1993
BURRELLE'S

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Modifying the Hatch Act

Action Taken in the Congress

The House of Representatives has taken action to water down the restrictions of the Hatch Act which concerns the activities of federal employees.

The move, also favored by the Senate and President Bill Clinton, would overhaul the Hatch Act to allow federal employees to engage in partisan politics outside the office in their own time.

Proponents of the act who do not want change fear that federal government workers will become over-political to the detriment of carrying out their own jobs in a non-partisan way.

The act, which has been on the books since 1939, currently prevents federal employees from running for political office, soliciting campaign funds or playing a leading role in a political campaign.

The measure would permit federal employees to run for local office, but not federal or state positions, on their own time without taking a leave of absence. Money also could be raised for candidates during off hours.

Supporters of change, who include both Democrats and moderate Republicans, say that 3.2 million federal workers have been denied their constitutional rights. Opponents say that the civil service system must preserve its non-partisan image.

Some observers question the movement for change. President Clinton has said he would like to trim the federal work force by attrition over four years. However, the proposed change would be expected to increase the power of public employee unions who could oppose such streamlining and make it less likely through political persuasion for Congress to reform the bureaucracy.

Hatch has been challenged three times on constitutional grounds and has been upheld in each case. In 1973 Justice Byron White, the only Democratic appointee now on the court, wrote in the opinion, "it is in the best interest of the country, indeed essential, that the political influence of federal employees on others and on the political process be limited."

Public employee unions have repeatedly tried to water down the Hatch Act. In fact, the president of the National Association of Letter Carriers has said that federal employees never will have the right to strike until the Hatch Act is changed.

The Hatch Act was designed to protect federal workers from political coercion and protect the public from a politicized bureaucracy by prohibiting certain partisan political activities. While the rights of the individual should be protected, so must the integrity of the civil service. Civil servants should be hired and promoted based on their qualifications and not their political loyalties.

The situation is a ticklish one. Lifting the lid on the Hatch Act, even for seemingly good reasons, could be treacherous and care must be taken as efforts go forward to cut waste and make the federal bureaucracy more efficient.

THE BUFFALO NEWS

BUFFALO NY
D 305 437

MAR 1 1993

BURRELLE'S

Don't wreck the Hatch Act

This federal law protects civil servants and public

WITH A DEMOCRAT in the White House, the Democrats who control Congress are pushing with unbecoming zeal for approval of changes that would gut the Hatch Act. Their success would be the public's loss. For half a century, this useful law has protected federal employees from partisan political coercion and helped assure the public of an impartial administration of government.

Those so eager to destroy the Hatch Act might recall the advice of John Kennedy: Learn why fences are put up before tearing them down.

This statute was enacted in 1939, following revelations of New Deal workers being coerced into supporting political incumbents. Its author, Sen. Carl Hatch of New Mexico, was a Democrat.

These legal safeguards for civil servants and the public are as important today as they were then.

Simply put, the Hatch Act bars federal civil servants from involving themselves in partisan political activities. It bans them from soliciting campaign funds, managing a partisan political campaign or running for office in a partisan election.

Despite support for the revisions by leaders of the public employee unions, many rank-and-file civil servants don't want the law crippled. Under it, they retain basic political rights while being insulated from partisan pressures from their superiors in government or influential political figures.

Some argue that the Hatch Act denies covered federal workers their constitutional rights. But the Supreme Court has rebuffed that spurious claim. Writing for a 1973 majority, Justice Byron White said it "is in the best interest of the country, indeed essential, that federal service should depend upon meritorious performance rather than political service, and that the political influence of federal employees on others and on the electoral process should be limited."

The ill-conceived House proposal would trample such distinctions. It would allow civil servants to run as candidates in partisan elections, serve as officers of political parties, raise money for and manage partisan campaigns and administer political action committees. The lone restriction: Do it only on your own time.

It is difficult to take that feeble distinction seriously. One wonders whether a federal housing administrator who serves as a Democratic or Republican party chairman by night could fairly decide between competing bids for housing grants by day. What about the corrupting *appearance* of favoritism? Would the refusal of a civil servant to assist in a congressman's campaign by night inhibit his or her chances for a deserved promotion at work by day?

Common Cause, the citizen lobby, does not consider the statute perfect, but strongly objects to the weakening revisions. President Fred Wertheimer recently urged House members to defeat the changes.

Some vague features of the law might well be clarified. But Congress can do that without kicking down a tested legal fence that for decades has protected the public and federal civil servants alike.

PRESS-REPUBLICAN
PLATTSBURGH, NY
DAILY & SUNDAY 20,260
FRIDAY
NOV 27 1992
BURRELLE'S
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VIEWPOINT

Retaining the Hatch Act

It's a fine ideal — "the impartial, evenhanded conduct of government business" — that President Bush claimed to uphold when he vetoed a revision of the Hatch Act in 1990. It now emerges that some of his own appointees have trampled at least the spirit of the half-century-old ban on partisan activity by federal workers.

The passport-file mini-scandal that has dirtied Bush's last months in office offers a depressing glimpse of Washington politics. Last September Republican operatives, desperate at their candidate's poor showing in the polls, seized on the rumor that Bill Clinton once had tried to renounce his American citizenship to avoid the draft.

This sounded wildly improbable to us; a young man bent on rising in politics doesn't throw away the first requirement for a political career. But even the remote chance that the rumor was true apparently turned some Republican heads.

It now emerges that Bush appointees at the assistant-secretary level in the State Department, partly in response to an inquiry from the news media, orchestrated an extraordinary search of passport records in the hope of uncovering a document fatal to Clinton's campaign. Telephone calls suggest at least coordination with the White House. The participants should have considered the damage to their side if their shenanigans became known, as they easily could.

They did, and the State Department's inspector general has investigated this abuse of confidential files and public employees to influence the outcome of an election. He has recommended that several officials be disciplined; one has resigned. And a new chapter is written in the annals of Republican — or rather, political — dirty tricks.

For the GOP has no lock on partisan zeal. The leaking to the press of Anita Hill's accusation against Supreme Court nominee Clarence Thomas last fall is only the most famous recent example of Democrats' deliberate exploitation of confidential documents for partisan ends. Scruples don't reliably discipline either party.

That's why the Hatch Act should be retained full strength. While it cannot prevent all abuses, the ban on partisan activism by government employees does forestall the open politicization of agencies. It sustains a certain attitude of public service and nurtures the idea that lapses are a cause for shame.

NIAGARA GAZETTE

NIAGARA FALLS, NY
DAILY 25,850

FRIDAY
MAR 5 1993

BURRELLE'S

501 ec# QM

Unwise Congress hacks up Hatch Act

DANGER AHEAD: *If a revised Hatch Act slides through the U.S. Senate, federal employee unions will become partisan armies and abuse will run rampant.*

While you were busy working Wednesday, the House of Representatives was busy doing dirty work. In a late-afternoon vote, Congress unwisely passed a revised version of the Hatch Act (H.R. 20) by 333 to 86. One of the "Yes" votes came from Congressman John J. LaFalce, D-Town of Tonawanda. A companion bill has been introduced in the Senate and is likely to slide through there, too.

The Hatch Act became law in 1939 after newspaper articles exposed the depth of political coercion visited upon federal employees. Since then, this far-seeing law has meant that federal employees are "Hatched," slang meaning they are forbidden to engage in partisan activities.

The 3.2 million postal workers and federal civil service employees are barred from soliciting political funds from fellow workers, using their offices for partisan activity, running for office or taking an active part in a campaign.

Their fundamental political rights — to vote, make contributions and engage in nonpartisan causes — are untouched. A recent poll showed that most federal employees like it that way.

The House bill, which has the unfortunate backing of President Clinton, will gut the Hatch Act and open the floodgates to political abuse. With one sweep of a pen, federal workers would be able to run for office, manage campaigns and raise money for political candidates.

The bill, called the Federal Employees Political Activities Act, would still bar campaigning on political property and using federal authority to influence campaign results. But these weak safeguards would hardly affect the immense coercive pressures of partisanship within a politicized civil service system.

If the Hatch Act is gutted, the influence and power of federal employee unions will increase exponentially. Not only will the corridors of power be flooded by demands from federally-paid power brokers, but the incentive to streamline government by reforming the federal bureaucracy would disappear overnight. The Post Office would earn the right to strike. Eventually, federal employees who don't toe a political line will be denied promotions, abused or fired.

It's an unsavory picture, mirrored by the way the House bill slithered to a vote on a trail of slimy procedures. H.R. 20 was approved early in the session, without a public hearing, by the Post Office and Civil Service Committee. On Feb. 23 and 24, a sly coalition of representives nearly got the bill through without debate or amendment. Their attempt to suspend the rules was narrowly averted.

The Hatch Act has been challenged three times in the Supreme Court. All three challenges were shot down by justices fearing the political influence of federal employees.

Two presidents, Gerald Ford and George Bush, sensibly vetoed similar Hatch-gutting bills in 1975 and 1990.

Clinton should do the same this time, but he won't. The short-term political bonus of a politicized federal bureaucracy is too tempting.

The only hope to save the Hatch Act lies in the U.S. Senate. Alphonse D'Amato is likely to oppose the revision, but Daniel Patrick Moynihan unfortunately will side with the president.

Let him know you think unhinging Hatch is a bad idea.

The Cincinnati Post
CINCINNATI, OH
210,000
OX-87

Hobbling the Hatch Act

The politicization of the federal bureaucracy will take a quantum leap if Congress much dilutes the 1939 Hatch Act.

Passed after Scripps Howard reporter Thomas Stokes revealed how New Deal politicos were forcing federal workers to campaign for Democratic candidates, the act insulates government employees from partisan politics. Essentially, these employees cannot work in campaigns, run for office or solicit political donations from fellow workers. Our sense is that most Americans support such restrictions, which foster public trust in the impartiality of the nation's civil servants.

Presidents Ford and Bush vetoed congressional attempts to water down Hatch, but President Clinton endorses the idea. Legislation sponsored by Sen. John Glenn, D-Ohio, and Rep. Bill Clay, D-Mo., would send federal workers down the partisan path by allowing them during off-hours to carry posters at political rallies and to distribute campaign materials.

Hatch's central purpose shouldn't be disturbed because it reminds rank-and-file bureaucrats that their cardinal mission is to serve the public's abiding interests — not ephemeral politicians. The Justice Department is investigating whether State Department staffers crossed this line by searching for passport dirt on presidential candidate Bill Clinton. Perhaps Clinton will ponder that sort of abuse when the latest attempt to hobble the Hatch Act lands on his desk.

FAYETTEVILLE
OBSERVER-TIMES

FAYETTEVILLE, NC
DAILY 71,061

FRIDAY
MAR 12 1993
BURRELLE'S

TOO MUCH LIBERTY

EDITORIAL

Move To Ease Hatch Act Sows Seeds Of Coercion

The Hatch Act has been in force for so long — 54 years — that few people besides federal employees give it much thought. Enacted to assure that Franklin D. Roosevelt wouldn't use federal workers to help him get re-elected, it circumscribes some basic freedoms of political activity the rest of us enjoy.

It has been a mixed blessing. On paper, at least, it keeps federal officeholders from strong-arming their employees into doing political work for them or coughing up donations to the cause. But it also keeps many good, civic-minded, talented people from engaging in ordinary civic activities — running for their local school boards, for instance.

The U.S. House of Representatives moved to change all that last week, voting to allow federal workers to run for lower-level offices, publicly endorse candidates and organize fund-raisers. (Under these loosened terms, they would have to do these things on their own time, which is only fitting.)

The Observer-Times is not convinced this is an unalloyed blessing.

The part about allowing employees to run for local office seems fine and high-minded. The other effects, however, are troubling. Any power that can be abused, eventually will be. If the Senate also passes this measure, we fear that down the road we'll be reading about members of Congress and other clout-heavy federal types muscling funds and "volunteer" assistance out of their hapless and helpless employees.

The Senate needs to cure this excess and send the measure back to the House. To do so, it will have to find the courage to go against its own self-interest. Dare we hope?

OBSERVER-REPORTER
WASHINGTON PA
DAILY & SUNDAY 29,002
FRIDAY
MAR 5 1993
559 BURRELLE'S
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The Hatch Act serves good purposes

The U.S. House of Representatives this week voted to revise the Hatch Act, which bans federal workers from being involved in partisan politics. Similar action is expected soon in the Senate.

Congress has voted twice before to revise the Hatch Act, but the legislation was vetoed, first by President Ford and then in 1990 by President Bush. With a sympathetic president now in the White House, supporters of the change see a good chance of success.

But it's still a bad idea. The Hatch Act serves a number of good purposes, not the least of which is protecting federal employees from being conscripted as political workers in order to keep their jobs.

It also protects the public from the possibility that an IRS agent or an administrator of a federal aid program might put the arm on citizens for campaign contributions.

There seems to be less than overwhelming support among federal workers for weakening the Hatch Act. According to the *Wall Street Journal*, a 1989 survey of federal employees by the Merit Systems Protection Board found that only 32 percent wanted the act changed.

The impetus for change comes not from the rank-and file, but from public employee unions, which have political agendas of their own. If the Hatch Act is gutted, they can turn their memberships into a ready-made army of political workers.

President Clinton was a beneficiary of considerable support from these unions. He will be expected to repay that debt if the Senate approves the bill.

The Philadelphia Inquirer

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10 Monday, March 1, 1993

EDITORIALS

Let the Hatch Act be

It's as good an answer as any to the puzzle of government employees' politicking

If the Democrats in Congress are going to pass bad bills, they should at least follow good procedure. That means allowing debate and amendments. Yet when the House took up a major bill last week, members not only couldn't amend it, they had virtually no time to debate it. In short, the representatives of the people were under a gag rule. It looked as if the Democrats don't like democracy.

The bill in question would have gutted a 54-year-old law — the Hatch Act — that bars federal workers from running for political office and from engaging in other partisan activities. It was enacted to make the bureaucracy less hack-riddled and to insulate federal workers from partisan pressures. Generally speaking, it has worked.

Fortunately, the bill didn't quite garner the two-thirds majority needed to pass it under this arrangement. Thus the bill will get the extensive debate that it deserves, and lawmakers will now have an opportunity to improve it by amendment.

Since President Clinton and majorities in both houses of Congress clearly want to soften the current law, the question isn't whether to do it, but how far to go. The legislation that was nearly rammed through the House last week would have gone way too far. In allowing federal employees to work off-hours in political campaigns, for example, the bill doesn't even exclude people who work for the Federal Election Commission (FEC) — the watchdog agency for congressional and presidential campaigns. As pointed out by someone whose district includes lots of federal employees, Rep. Frank Wolf (R., Va.), that would let an FEC employee do moonlighting work for a congressional candidate, then audit the financial report of the candidate's opponent by day.

Mr. Wolf also argues that the ban on campaign work should be maintained as well for employees of the Justice Department, the CIA and other law-enforcement and intelligence agencies. He reasons that, in such areas, it's especially important that decision-making be free of even the possibility of being influenced by partisan consideration. We agree.

But even if such exceptions were made, we fail to see the compelling argument for freeing the rest of America's roughly 3 million federal workers and postal employees to leap into politics — letting them participate in campaigns and, without giving up their relatively secure positions, even run for office themselves. If such involvements were allowed, the public's respect for federal workers, such as it is, would surely decline. At the same time, more and more employees would feel improper pressure to be politically active in their spare time.

These are basic reasons why the Hatch Act is being defended by the ACLU, Common Cause — and many federal employees themselves. If it's not broke, why rush to fix it? For that matter, why fix it at all?

NEWS
NEW CASTLE, PA
DAILY 20,000
THURSDAY
FEB 25 1993

Keep Hatch Act in present form

President Clinton has acknowledged on several occasions that the American people's faith in the federal government has seriously eroded. Despite that, he seems bent on speeding up that erosion.

How? By supporting changes in the Hatch Act, the law which prevents federal employees from engaging in political activity. The president has said he will sign legislation designed to ease the current restrictions.

Advocates of change say that 3 million federal workers are denied basic First Amendment rights because they cannot volunteer for political campaigns, run for office or make campaign contributions. Changing the Hatch Act, they say, would be a blow for freedom.

Don't believe it. The impetus for amending the Hatch Act has nothing to do with concern for the Constitution. But it has a great deal to do with political influence. And while there are no doubt federal employees who feel restricted by the limits imposed by the Hatch Act, there are probably many more who are usually grateful for rules which actually serve as a form of protection.

Because of the Hatch Act, it's a crime to attempt to coerce a federal employee into making a political contribution or assisting parties or candidates in some other way. Alter the act and rest assured government workers will face pressures they don't encounter now.

How could amending the Hatch Act hurt? Here's an example: One of the proposed changes would allow federal employees to run for public office. It doesn't require a great deal of imagination to see where such an individual could be compromised by having his obligations as a federal employee conflict with his interests as an elected state or local official.

It's important to consider the stakes in altering the Hatch Act. What's more important at this point in the Republic's history, allowing federal employees to dabble in politics or striving to protect the integrity of and public confidence in the federal government?

That's why Clinton's support for changes in the act is so ironic and disturbing this early in his presidency. Even if he were a strong advocate of amending the act, is it really a top priority? Shouldn't he tell fellow Democrats in Congress to place this issue on the back burner?

Instead, House Democrats tried this week to ram the amendments through over Republican demands for additional debate. It appears Washington has solved its gridlock problems on a number of issues, but integrity is still in short supply.

Hatching a plot

Democrats target a law that promotes good government

For more than half a century, a law called the Hatch Act has promoted good government by restricting political activities by federal workers. But this week the U.S. House of Representatives, sensing support from President Clinton, voted 333-86 to relax the law. The bill isn't nearly as bad as it might have been, but it still goes too far.

At present, federal workers are barred from engaging in any partisan political activity on the reasonable theory that public servants shouldn't be pursuing partisan political causes, even on their own time. One danger is that public employees might pressure their subordinates to join in their political activities. Another is that consumers of government services would find themselves on the receiving end of an unwanted political message.

The bill passed by the House purports to guard against such abuses. For example, it would prohibit government workers from *forcing* other employees to engage in political activity. But, as students of the Pennsylvania political tradition of "macing" know, defining and proving coercion in such situations can be difficult.

Critics of the Hatch Act, including unions representing federal employees, complain that the law deprives federal workers of free-speech rights enjoyed by other Americans. The U.S. Supreme Court rightly has rejected that argument. There is nothing unconstitutional about imposing restrictions on federal employees that don't apply to the general population.

Granted, the bill passed by the House is less sweeping than past proposals, a sign that its proponents recognize public concerns about a politicized federal work force.

For example, federal workers would still be barred from running for federal or state offices, but they could seek local offices. The theory, as one member of Congress put it, is that "local government is, after the elections, fairly non-partisan." Yet that characterization is not universally true and, in any case, even local election campaigns often run on for several months.

In a democracy, partisan politics plays a legitimate and crucial role, as the changes wrought by Bill Clinton since his election demonstrate. But for half a century federal law has recognized that non-policymaking government workers should be insulated from political pressure and prevented from exerting such pressure themselves on the citizens with whom they deal.

If Congress is unwilling to leave well enough alone, the future of the Hatch Act will lie with President Clinton. In this case, we hope he will have the courage *not* to change a reasonable law that has served the country well.

EVENING STANDARD
MILTON, PA
DAILY 6,300
TUESDAY
MAR 2 1993
BURRELLE'S

Hatch-bashers hard at work

In 1939, a bill that made it illegal for federal government employees to participate in many overt political activities was passed.

The Hatch Act, as it came to be known, named for Sen. Carl Hatch of New Mexico, was a good bill then and it's a good bill now. It didn't take away the right to vote, but it did limit the involvement of federal government workers in campaigns. It also protected them from unscrupulous bosses.

Unfortunately, many of our federal lawmakers are trying to gain its repeal, or at least weaken it to the point that we will have a politicized bureaucracy, which is the reason the Hatch Act was passed in the first place.

Since the beginning of the new legislative session in Washington, our lawmakers have been trying to get a bill passed that would allow federal government employees to have full participation in politics.

On the surface, that sounds like a good idea, but in practice it has a terrible odor.

One reason it smells bad is that prior to 1939, government employees were subjected to harassment and coercion by their superiors, who wanted them to work for certain political campaigns.

Another reason for the bad odor is that repealing the act or weakening it would open the door for federal unions to become more politically powerful. Indeed, the National Association of Letter Carriers is a proponent of the latest assault on the Hatch Act.

Many groups, including Common Cause, recognize that the Hatch Act is the only way to avoid having federal unions become full-fledged political machines.

There is no evidence that the majority of federal workers want the act repealed or changed. A poll by the Merit Systems Protection Board found that only 32 percent of those workers wanted the act weakened.

One reason for their support of the act is that political arm-twisting is illegal as long as Hatch is in force, full strength.

The machinations of the House to gut the Hatch Act include the approval on January 27 of H.R. 20, introduced by Rep. Bill Clay of Missouri by the Post Office and Civil Service Committee, which Clay chairs, without a hearing.

On February 23 and 24, the House tried, but failed to approve the bill without debate or amendment by suspending the rules. The two-thirds vote needed to suspend the rules couldn't be mustered, but that didn't stop the assault on the act. It continued this week.

In 1990, President Bush vetoed anti-Hatch Act legislation, but the House overrode it by a vote of 327-93. Rep. George Gekas, who represented the Milton area at that time, was one of only five members of the Pennsylvania delegation who voted against the override.

Fortunately, the Senate narrowly sustained the veto when 65 of the 100 members, two short of the required two-thirds majority, voted for it. Arlen Specter and the late John Heinz voted to override the veto.

Another Hatch Act revision, S. 185, has been introduced in the Senate by Ohio Sen. John Glenn, who chairs the Governmental Affairs Committee, which will consider the bill.

Hearings on the Senate bill were scheduled for March 2, but were delayed until the confirmation of a Director of the Office of Personnel Management and Attorney General.

The House obviously didn't think the opinions of these two key government officials was important.

More than 100 years ago, the United States replaced the spoils system with civil service. The new system has problems, to be sure, but they will only be magnified if civil service is permitted to become a lobby for its own purposes.

If President Clinton signs a bill to repeal or weaken the Hatch Act, he will be creating a throwback to the spoils system.

The Hatch Act is one of the few "good government" laws that amount to a hill of beans. Let's keep it intact.

CHATTANOOGA NEWS-FREE PRESS
CHATTANOOGA TN

Chattanooga News-Free Press
(Chattanooga, TN)

February 7, 1993

BURRELLE'S

Sunday, February 7, 1993

'I'm From The IRS And . . .'

How'd you like to have a friendly agent from the Internal Revenue Service approach you with a smile, saying: "I'm from the IRS — and I wonder if you'd like to make a contribution to the candidate I'm supporting for the Senate or the House of Representatives or president?"

Would you timidly reach for your pocketbook — or run?

It is intimidating enough to get a notice from the IRS saying your tax form has some question about it.

It's unlikely you will encounter a scenario anything like that above. But consider this: What if you worked for the IRS or the Postal Service or the National Guard or any other federal office — and your supervisor, the one who fills out your performance evaluation — came by with a smile and a request for a political contribution? How would you feel?

Political shakedowns are nothing new. Nor is forced political activity. Nor is the use of governmental employees as "muscle" and "legs" in political campaigns. But in the federal government, the Hatch Act has worked to keep government employees from becoming an oppressive political machine directed by those who are in positions of authority.

The trouble is that there are now efforts to repeal (or amend) the Hatch Act in ways that could unleash thousands of federal employees in new and extensive political action.

That could mean tax-paid government employees might be working against the political preferences of at least a portion of the citizens who pay their salaries and whom they are supposed to serve impartially.

The Hatch Act was adopted in 1939. It protects the civil service and our citizens by assuring federal employees are not hired or promoted because of politics instead of qualifications, and seeks to assure governmental programs are not administered in a partisan manner. It seeks to avoid political coercion. Some politicians and particularly the bosses of the big and powerful public-employee unions in federal government don't like that. They want to gain more muscle by killing the Hatch Act.

But you don't hear any grassroots clamor from ordinary citizens for repeal of the Hatch Act.

The Hatch Act still leaves federal employees free to vote, contribute personally to candidates and volunteer as campaign workers in non-work hours.

Twice during the Bush administration, Congress voted to take away the Hatch Act protections. Twice, President George Bush vetoed the bills and twice Congress was unable to override his veto. But now with President Bill Clinton and Democratic Senate and House majorities in cahoots, the attack on the Hatch Act has been renewed.

The Senate Governmental Affairs Committee is scheduled to begin hearings on anti-Hatch Act legislation Feb. 17, with further action coming soon after. (Sen. Jim Sasser, D-Tenn., is a member of that committee.)

The powers of the federal government, federal employees, the federal purse and all of the federal bureaucracy already are great. There is no need to weaken the Hatch Act's protections.

Watch out! There's danger that much of the federal government may be turned into a potentially oppressive political machine if the Hatch Act is killed or weakened.

Tell your senators and representative what you think about that.

CHATTANOOGA NEWS-FREE PRESS

CHATTANOOGA DAILY

SUNDAY

MAR 22 1993

Why We Should Keep Hatch Act

While the liberal Democratic majority in Congress is moving with President Bill Clinton's approval to kill the Hatch Act, testimony in a trial in Nashville emphasizes why they are wrong.

The Hatch Act is federal law designed to minimize the use of federally financed government employees for partisan political purposes. Its repeal is being sought because liberal Democrats and the bosses of the political labor unions that dominate much of federal government want to be able to shake down government employees for campaign money and to mobilize a 3-million-person army of political workers in their favor.

Tennessee's Public Service Commission, headed by three elected officials, regulates trucking and other transportation, among other things. It gets federal money, making it subject to the Hatch Act. But at trial of a lawsuit brought by independent truckers in federal court in Nashville, there have been disquieting claims of the use of public employees to raise political campaign money from those being regulated, with the threat of tough enforcement of rules against non-contributors and "favors" for regulation-violating contributors.

We need to keep the Hatch Act to safeguard public employees from being shaken down by political bosses to keep them from using taxpayers' money and to prevent the people's government power from being used against them.

But what is being complained of in Tennessee will surely become more widespread if the Democratic congressional majority and Mr. Clinton kill the Hatch Act and mobilize a captive army of government employees.

Leave 'Hatch' alone

LEAF-CHRONICLE

CLARKSVILLE, TN
DAILY 18,670

THURSDAY
MAR 11 1993

❑ The law protects federal workers.

We're are concerned that Congress is considering revisions in the federal Hatch Act, a 1939 law that bars federal workers from partisan political activities.

Both Presidents Reagan and Bush opposed any tinkering with the Hatch Act, which has kept protected federal workers from political coercion from their superiors and everyone else from being harassed by federal bureaucrats for partisan political gain.

In this latest assault on the law, restrictions on federal employees' political participation would be eased. Under the House-passed measure – which the entire Tennessee delegation (except for an absent Harold Ford) voted for – federal workers could participate in political activity during non-work hours.

As Frank R. Wolf (R-Va.) pointed out, however, the bill still could lead to potential conflicts of interest among federal workers. An Internal Revenue Service auditor, for instance, could chair a county Democratic or Republican committee on his own time, or a U.S. attorney preparing a case against a politician could work for the politician's opponent at night, Mr. Wolf said.

It also contains the troubling provision that would permit employees to solicit political contributions from fellow workers.

The U.S. Supreme Court has twice upheld the constitutionality of the Hatch Act. Surveys have found no overwhelming desire among federal workers to get rid of the law (indeed, many federal workers use the Hatch Act as a shield against subtle pressures to contribute money and time to partisan causes).

If it isn't broken, don't fix it. The Senate should vote down the House's efforts to weaken a law that has served the nation well for more than half a century.

Houston Post
HOUSTON, TEXAS
M. 325,671

FEB 22 1993
BURRELLE'S

HATCH IN JEOPARDY

Law keeps political pressure off federal employees

EDITORIAL

THE HATCH ACT, one of the best pieces of government reform legislation ever passed by Congress, has finally been delivered into the hands of its enemies. The only way it is likely to survive is through your demands that it not be gutted.

For more than half a century, the Hatch Act has protected the public from a politicized federal work force and shielded government workers from political coercion by their bosses and others.

It is once again under attack, however, by the powerful public employee unions and their friends. On Tuesday, the House may vote on a bill its backers say will "revise" the Hatch Act to permit federal employees to engage in political activities from which they are now barred by the Depression-era law. The bill would, in fact, kill Hatch.

The last assault on the act was in 1990 when the Democratic-controlled Congress overwhelmingly passed a similar "revision" bill. President Bush vetoed it and the Senate failed to override the veto by only two votes.

The Hatch Act was passed in 1939 after revelations that employees of the Works Progress Administration, a New Deal agency, were being pressured to make political contributions.

Today's Hatch Act revisionists argue that the 3 million federal employees should have more freedom to engage in political activities, such as organizing political meetings and fund-raising events, endorsing candidates and holding office in political groups. But some federal employee union leaders apparently have their own agenda which includes, among other things, winning the right to strike.

The Hatch Act may be unnecessarily complicated and restrictive, but that surely can be remedied without paving the way for those powerful unions to become partisan political machines.

Such organizations could make it difficult, if not impossible, to ever reduce the size and cost of government. And it would destroy the public's confidence in its federal civil service.

TYLER MORNING TELEGRAPH

TYLER, TX
DAILY 37,356

TUESDAY
MAR 2 1993

BURRELLE'S

533
LOCO

Editorial

Hatch Act Revision Threat To Protections

EDITORIAL

An old subject that is getting new attention in Washington is a movement to destroy the Hatch Act and its protections against a politicized bureaucracy.

Legislation, H.R. 2 by Rep. Bill Clay of Missouri, was introduced on the first day of the new session and was approved by the Post Office and Civil Service Committee, which Clay chairs, without a hearing.

The Hatch Act, enacted in 1939, protects federal workers from political coercion, and it protects the public from a politicized bureaucracy by prohibiting federal and postal workers from participatin in certain partisan political activities.

Federal and postal unions have challenged the Hatch Act three separate times in the U.S. Supreme Court, but the constitutionality of the Act was upheld each time.

In writing for the majority in one of those decisions, Justice Byron White said, "...Our judgment is that neither the First Amendment nor any kind of provision of the Constitution invalidates a law barring this kind of partisan political conduct by federal employees.

"Such decisions on our part would do no more than confirm the judgment of history, a judgment made by this country over the last century that it is in the best interest of the country, indeed essential, that federal service should depend upon meritorious performance rather than political service, and that the political influence of federal employees on others and on the electoral process should be limited."

Congress approved legislation to lift the restrictions on politics in the federal service in 1976 and again in 1990, but both times the legislation was vetoed and the vetoes upheld.

In 1976, then President Gerald Ford said: "The public expects the government service will be provided in a neutral, nonpartisan fashion. This bill would produce the opposite result ... If this bill were to become law, I believe pressure would be brought to bear on federal employees in extremely subtle ways beyond the reach of any anti-coercion statute so that they would inevitably feel compelled to engage in partisan activity."

In 1990, President Bush's veto of a similar bill was overridden in the House and narrowly sustained in the Senate. He said: "The Hatch Act has successfully insulated the Federal Service from the undue political influence that would destory its essential political neutrality."

In the Senate, the new Texas member, Robert Krueger, could be a key vote on the bill this year.

In an editorial Feb. 19, the *Wall Street Journal* noted that President Bill Clinton is not likely to be able to accomplish his pledge to reduce the federal work force through attrition by 100,000 over four years if he goes along with the effort in Congress to destroy the Hatch Act.

Destroying the Act would boost the power of public employee unions, making it less likely that Congress would ever vote to streamline or reform the bureaucracy, the editorial said.

Federal workers themselves have never overwhelmingly been in favor of changing the Hatch Act. A survey in 1989 by the Merit Systems Protection Board found that only 32 percent of federal employees wanted the act weakened.

Common Cause and other groups of that type oppose weakening the Hatch Act. It is seen as the only way to keep federal unions from emerging as strictly partisan political machines.

Concerned citizens would do well to let their legislators know that they don't want the Hatch Act weakened. Its provisions are widely seen as one of the nation's oldest and best "good government" laws, and should be kept strong.

LUBBOCK AVALANCHE-JOURNAL

LUBBOCK, TX
DAILY 67,153

SATURDAY
FEB 27 1993

RETAIN THE HATCH ACT

Curb Bureaucrats' Politics

PRESIDENT CLINTON must rethink his pledge to support changing – gutting might be the more appropriate word – the federal law that bars partisan political conduct by employees of the federal government.

If that prohibition goes down, the potential for a politicized federal work force will go up – and out the window may go any real hope of cutting back on the number of people who draw taxpaid salaries from Washington.

Don't we have Mr. Clinton's promise that he will reduce the federal work force by 100,000 over four years? Scrapping the Hatch Act would enable federal employees to become a powerful lobby against such a cutback.

Nevertheless, House Democratic leaders last week tried to rush through a bill easing the ban, just failing to muster a needed two-thirds majority.

THE AP SAID the measure still is likely to become law, awaiting only routine legislative processes that House leaders mistakenly thought they could bypass.

When George Bush was in the White House the bill easily passed Congress only to draw his veto. Mr. Bush argued for preservation of the Hatch Act, saying it had "successfully insulated the Federal Service from the undue political influence that would destroy its essential political neutrality."

President Clinton, however, has pledged to sign the new legislation.

Supporters of the measure say it merely would let federal workers run for office, manage campaigns and collect political donations – as long as they would not try to intimidate coworkers into joining the cause.

TAKEN AT face value, that sounds well and good. But the potential is there for abuse, as recognized by a Supreme Court decision in 1973.

Justice Byron White, writing for the court majority at that time, said the judgment of the nation over the past century was "that it is in the best interest of the country, indeed essential, that ... the political influence of federal employees on others and on the electoral process should be limited."

The Hatch Act was originally passed in 1939 amid the growth of New Deal bureaucracy and revelations of political coercion in the WPA jobs program.

At the time, lawmakers worried that President Franklin D. Roosevelt would turn federal relief workers into a "partisan army" to help him get re-elected.

We cannot risk the formation of a "partisan army" of federal employees at the very time the nation needs to trim the federal work force. The two concepts run at cross purposes

RICHMOND TIMES-DISPATCH

RICHMOND, VA
SUNDAY 251,557

FEB 28 1993
BURRELLE'S
171 SY
xce01

Down the Hatch?

In 1939 Congress passed the Hatch Act, which prohibits federal employees from engaging in partisan politics. The Act protects (1) the Civil Service from coercion ("if you want your job, campaign for me") and (2) the citizenry from politicized government workforce that could use its immense resources on behalf partisan causes. The Hatch Act has served the nation well.

And Congress wants to change it.

Last week the House leadership almost rammed through a bill that would essentially repeal the Hatch Act. The attempt failed to gain the two-thirds necessary to pass a bill under a so-called "special order." Sooner rather than later the House is expected to vote for repeal on a simply majority vote. President Clinton says he would sign repeal legislation. Thus the Senate likely will form the last line of defense.

Should Hatch be repealed? Clinton supports strict ethics regulations: He wants his aides to avoid conflicts of interests. There is no greater conflict of interests than that of the bureaucracy lobbying and campaigning for... more bureaucracy. The President also has called for patriotic sacrifice, for putting the nation's economic needs first. If empowered to engage in partisan politics would federal bureaucrats work for more spending — or less? The naive need not venture an answer — not even a guess.

Government service is a privilege. It is not a right. When an individual takes a Civil-Service job, he voluntarily relinquishes his right to run for office, to participate in partisan activity, to campaign openly on others' behalf.

The Civil Service replaced the spoils system: the Hatch Act keeps partisan politics out of Civil Service. The system works. There is no need to change it.

DAILY PRESS

NEWPORT NEWS, VA
SUNDAY 122,705

FEB 28 1993
BURRELLE'S
173 SY
xce09

The Hatch Act

Easing political limits on federal workers a mistake

People can choose whether to be federal employees. And if they decide to accept such employment, they should be willing to accept the limitations imposed by the Hatch Act.

The Hatch Act, passed in 1939, prevents the federal work force from becoming politicized. It limits the political influence of federal employees.

That is as it should be, and efforts now under way in Congress to weaken the Hatch Act are misguided. The measure being considered would permit federal workers to participate in politics as long as they did so on their own time and did not try to intimidate co-workers. That's like telling the cat he can play with the canary if he promises not to eat it.

Americans are fed up with the federal bureaucracy. They want to see it trimmed and made more efficient and responsive. That won't be accomplished by giving federal employees more power, but more power they will get if restrictions on political activities are lifted.

America's civil service system isn't perfect, and there is some degree of unfairness in the Hatch Act. Most federal employees would not abuse their positions if they became involved in politics. Still, the door to such involvement should remain closed. Despite its flaws, the system works, and easing Hatch Act restrictions would not be in the best interests of the nation.

DANVILLE REGISTER & BEE

DANVILLE, VA
DAILY 23,370

FRIDAY
MAR 5 1993
BURRELLE'S

48
Ced. RM

Gridlock reconsidered

Congress is poised for an overhaul of the Hatch Act, a 1939 law designed to keep political patronage from tainting the federal work force.

The House passed a measure Wednesday that merely tinkers with the Hatch Act, but diluting the ban on political activities for federal employees may be a prelude to its eventual demise.

If the Senate concurs with the House, federal employees will still be barred from running for elective office on the national or state level. They will, however, be permitted to run in local elections and to endorse and raise money for candidates on their own time.

The margin of the House vote — 333-86 — testifies to the Hatch Act's shaky standing in Washington. All but two Democrats voted for the changes, and the measure also attracted 85 Republicans.

Congress has been itching to alter the Hatch Act; only two vetoes by President Bush has kept it at bay this long.

The bipartisan appeal of the Hatch Act should come as no surprise. The end of the Hatch Act means the beginning of an enormous power surge at both ends of Pennsylvania Avenue.

Although the Hatch Act was a response to Franklin Roosevelt's political bullying to shore up his New Deal agenda, the appointment power of Congress is now more intimidating than that of the executive branch. Unless term limits become the law of the land, Congress is a far more durable institution.

But the misuse of presidential power remains a legitimate fear. If a president decided on wholesale repayment of his political debts, the civil service system could be gutted.

The federal work force represents another pitfall if the Hatch Act is scrapped. Would Joe Democrat enthusiastically carry out the policies of a Republican president? Could Jane Republican be trusted with the agenda of a Democratic Congress? Would bureaucrats of any stripe deal in good faith with citizens who hold different political views?

The nightmarish vision of Washington as the world's capital of political patronage makes one long for the good old days of gridlock.

Milwaukee Sentinel
MILWAUKEE WI

MAR 1 1995
BURRELLE'S

Milwaukee Sentinel
(Milwaukee, WI)

March 1, 1995

Don't change it: Hatch Act curbs political abuse

Down with the Hatch Act!

We'll drink to that, said the Democratic leadership, which was in such a hurry to repeal the venerable ban on political activity by federal employees that it acted to speed up the process and limit debate as much as possible.

Fortunately, more sober heads prevailed, even among those in the party, and proponents Wednesday failed to muster the necessary two-thirds majority in the House of Representatives to rush through their bill.

Unfortunately, legalization of this breach of ethics still is likely. The vote in favor was 275-142, more than enough to sale through under a conventional procedure. And President Clinton cannot be counted on to veto it, as did President Bush. In fact, he has pledged to sign it.

Supporters suggest that GOP opponents of the change are paranoid. What harm can be done, they ask. And they speak of equal rights for federal workers.

The law proscribes the right of government employees to run for office, manage campaigns and collect political donations.

> Formal sanction of political activity by those in federal service would only invite abuse.

It was passed in 1939 amid the growth of the federal bureaucracy in the administration of Franklin Delano Roosevelt, ostensibly to satisfy concerns that FDR would turn Works Progress Administration workers into a "partisan army" to help him get re-elected.

The truth is, however, that corruption and coercion of public employees for political gain did not begin in 1932.

The Hatch Act has served to curb such abuses and punish those who violated its provisions. And it is not a gag rule. The act specifically preserves the right of federal employees to express their opinions as individuals, both publicly and privately, on political subjects and candidates.

Under the proposed law, an employee would have to confine his or her political activity to off duty hours; intimidating other workers into joining their cause would be forbidden. How would this be guarded against? Monitors in the restrooms? Electronic bugs in the cafeteria?

Members of Congress often go too far in such matters despite the wide latitude they are given. And, in truth, all federal workers are not above borderline partisan activities, and that is to be expected.

But formal sanction of political activity by those in federal service, even under the restrictive conditions in the proposed bill, would only invite abuse. And though a few might reap benefits, the entire system would be in danger of politicization.

If more proof is required to show this is a bad idea, one need only look at the recent scandals in Congress. Those weren't civil service people running the House bank and post office, either.

WISCONSIN STATE JOURNAL

MADISON, WI
DAILY 84,376

MONDAY
MAR 8 1993

OUR OPINION

Protect Hatch Act

From the "Just what the nation needs — NOT!" file: Congressional efforts to ruin the Hatch Act are moving right along, despite a lack of evidence that the 54-year-old law needs any tinkering at all. The potential consequences are dire: So-called "Big Labor" would gain a stranglehold over the federal government, with the potential to choke off efforts to cut the federal payroll even as the federal budget deficit rockets past the $330 billion mark.

Since 1939, the Hatch Act has barred most federal employees and U.S. Postal Service workers from soliciting campaign funds from fellow workers, using their office for partisan political activity, taking an active role in partisan campaigns and running for partisan office. The "Hatched" workers are still allowed to vote, express political opinions, make contributions and engage in non-partisan activities, including running for non-partisan office.

The act was inspired by newspaper reports during the 1930s that federal employees — many of them victims of the Depression who were managing to eke out a living on WPA jobs — were being coerced into contributing to political campaigns. Its roots are in the civil service system, which protects federal employees from the threat of losing their jobs with every new administration.

And the vast majority of the nation's 3.2 million federal employees think that's a fair trade. In a 1989 survey, 62 percent opposed weakening the Hatch Act. A whopping 89 percent of members in the National Federation of Federal Employees voted against changing the act.

So whence comes the momentum from change if not from the rank-and-file? From the union leaders, who see the Hatch Act as a major roadblock in their path to power. Weakening the Hatch Act would give them access to an enormous army of potential campaign workers, enabling them to help elect representatives and senators who are sympathetic to union causes.

These union leaders talk about how federal workers are being denied their rights, but their true aims have less to do with the Constitution than with the next contract dispute. The president of the National Association of Letter Carriers, for example, has declared that until the Hatch Act is weakened, his members will never get the right to strike. And it strains credulity to imagine federal union leaders (40 percent of the federal workforce is unionized, compared to 16 percent in the private-sector) supporting President Clinton's plan to cut 100,000 federal jobs.

Just how powerful these union bosses already are is evidenced by the fact that three good Wisconsin Republicans, U.S. Reps. Scott Klug, Steve Gunderson and Thomas Petri — all of whom ought to know better — have already signed on to weakening the Hatch Act. Just who do they think they're representing? Not federal employees, who like the act just the way it is. Not taxpayers, who would probably find it disconcerting (to say the least) to have their local Internal Revenue Service agent, or FBI man, or federal game warden knocking on their door looking for campaign contributions.

Three times, the federal and postal workers unions have challenged the Hatch Act in the federal court system on grounds it deprives their members of Constitutional rights. Three times, the U.S. Supreme Court has upheld the act. Twice, attempts to weaken the act have been passed by Congress but vetoed by Republican presidents: Gerald Ford in 1976, George Bush in 1990. Unfortunately, if this most recent attempt passes, President Clinton has promised to sign it.

"The American people should know this is a disgrace," says U.S. Rep. Frank Wolf, a Republican whose Virginia district includes thousands of federal workers who want the Hatch Act unchanged. He's right. And the American people need to speak up now and tell Congress to leave the Hatch Act alone.

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NO GREAT FAVOR

Repeal of Hatch Act would be a mistake

Wisconsin's members of the House of Representatives did their state and nation no great favor last week when they voted to repeal the 54-year-old Hatch Act.

The Hatch Act bars federal workers from running for political office and participating in partisan political activities. Those in favor of repeal, constituting a hefty 333-86 House majority, argue that the law deprives federal workers of their constitutional rights.

What the Hatch Act actually does is insulate federal employees from the pressures of the politicians responsible for their jobs and paychecks. Its repeal will give elected officials and partisan political appointees enormous leverage over federal employees and their political activities.

It is no acccident that the Hatch Act is on the books. It was passed originally to free the bureaucracy of political hacks and insulate federal workers from the politicians' understandable drive to get re-elected.

At last report, most federal employee groups opposed repeal of the Hatch Act. That Congress might go ahead with repeal anyway illustrates the hollowness of the legislators' claim that they are protecting the interests and rights of federal workers.

It's no mystery why Congress is doing this. Members envision a federal bureaucracy that will be made beholden to them and vulnerable to demands that federal workers help further incumbents' political ambitions. When a person controls the money and authorization for your job, you're not likely refuse an invitation to join his re-election team.

The desire to be re-elected is, of course, a bipartisan concern of incumbents. As a result, the fact that Wisconsin's entire congressional delegation — Democrats and Republicans alike — voted for repeal comes as no real surprise.

It is, however, a disappointment.

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Hatch Act again comes under attack in Congress

The Hatch Act has been the bulwark protecting federal workers from the pressures of their bosses to get politically involved.

The Hatch Act is being pecked away now, and it is a serious matter.

Even Republicans, such as Tom Petri, Steven Gunderson and Scott Klug, all of Wisconsin, have taken a turn with the hammer and chisel.

It is not being repealed, but it is being changed in such a way that the protection it gives federal workers — and the protection it gives the public against political involvement of its public servants — is being diminished.

Federal workers contend they are entitled to enjoy the same rights to political involvement that non-federal employees enjoy.

To this, the answer is that they enjoy job security and extraordinary pay levels as compensation for giving up the right to be in politics. But they don't seem willing to give up their extraordinary privileges and extra pay to justify their entering into politicking.

The Hatch Act was enacted in 1939 because of the abuses that occurred in federal employment because political coercion was so rampant.

No one has been harmed by having the Hatch Act protections in place. But the yearning for political power over federal employees did not entirely subside. The Hatch Act has never been secure from attack from those wanting that added power. But this term of Congress it has become very insecure.

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